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THE CALIFORNIA PUBLIC UTILITIES ACT

WITH

CONSTITUTIONAL PROVISIONS OF VARIOUS STATES

A SHORT HISTORY OF SUCH ACTS AND A DISCUSSION OF CONSTITUTIONALITY

WITH

ANNOTATIONS

BY

E. W. FREEMAN

Of the Los Angeles Bar

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TO THE MEMORY

of the

Late JUDGE HORACE C. ROLFE

of the

San Bernardino Bar.

This book is inscribed to him not only as a tribute to his high professional character and citizenship, but as an expression of respect and admiration by one who enjoyed the good fortune of once being associated with him in the practice of law.

PREFACE.

In publishing this book, the central thought has been to make it a practical book, not only for the practicing attorney, but for all others who may be interested in the management and control of Public Utilities within the State of California.

For the purpose of making it more comprehensive, constitutional provisions of various states have been printed herein, and authorities cited which touch upon various provisions of the act.

In annotating, it was deemed advisable to cite only such decisions as would elucidate or exemplify the act under consideration.

If these objects have been accomplished, this book will have served its purpose.

Los Angeles, California, April, 1912.

E. W. FREEMAN.

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THE CALIFORNIA PUBLIC UTILITIES ACT

CHAPTER I.

INTRODUCTORY.

§ 1. California Public Utilities Act.
§ 2. The Illinois Railroad and Warehouse Commission Act.
§ 3. The Interstate Commerce Commission Act.
§ 4. Similar Governmental Policy in Other Countries.

§ 1. California Public Utilities Act is not new legislation in an untrodden field, but is the most recent development of the principle of corporation control by the state, rate regulation, and the like, and is welcomed by the corporations, who are anxious that just and remunerative rates shall be established and maintained. The California Act is one of the most advanced that has yet been adopted in any state. The Commission is given more absolute power than by any other of the similar acts, unless an exception is to be made in favor of the Minnesota Act of 1887, in which act the Railroad Commission of that state was given absolute power and its action made final. This Minnesota Act cut off all right of appeal to the courts, and for this reason was held to be unconstitutional.[1]

At first these acts merely aimed to control rates, prevent unfair preferences, prohibit rebates, protect life, and the like; but the tendency now is to extend to complete corporate management and control; some of the acts,—and particularly the California Act,

[1] See *post*, c. 3, § 57.

—going to the extent of prohibiting stock and bond issues, and the like, without the consent of the Commission being first procured, and enforcing these regulations by penalties prescribed.

While provisions of this character have been introduced in the statutes of several of the states, few or none of them go to the extent of the provision found in the California Act. Thus, the Nevada legislature in 1911 passed an act which gives a Railroad Commission authority over all public utilities,[2] the same as does the California Act, but does not give authority or control over the capital stock, bonds, nor other securities of corporations.[3] The Ohio legislature of 1911 passed an act similar to the California Act, and broader than the Nevada Act, in that the Commission created by the Ohio Act is given full power and supervision over security issues and mergers.[4] Under the Oregon Public Utilities Act, which has been held up by referendum, there is no restriction as to stocks or bonds;[5] the Washington Act contains no stock or bond restrictions;[6] but the Wisconsin Act provides that "no stock nor bonds, ... shall be issued until there shall have been recorded upon the books of the corporation the approving certificate of the Railroad Commission,"[7] and makes all stock, certificates of stock, bonds and other evidence of indebtedness, issued contrary to the provisions of the act, void.[8]

§ 2. Illinois Railroad and Warehouse Commission Act of 1871, giving to the Commission authority to fix passenger and freight rates on all railroads for

[2] Nev. Laws 1911, §§ 82, 322, 459.
[3] Nev. Laws 1911, § 376.
[4] Ohio Sess. Laws 1911, vol. 102, p. 549 et seq.
[5] Or. Gen. Laws 1911, p. 483 et seq.
[6] See 2 Wash Stats., par. 8627.
[7] Wis. Stats. 1907, pp. 413, 1753, 1754.
[8] Id., pp. 414, 1753–1758.

carriage within the state, was the pioneer act in this field of legislation, and fixed the policy and furnished the model for all similar acts since passed in the various other states.

The litigation with railroads which followed the establishment of the Illinois Commission and investing it with such broad discretionary power first fully demonstrated the public character of the business carried on and conducted by railroads, as distinguished from purely private business enterprises, and firmly establishes the principle of their liability to wholesome and reasonable regulation and control by the government in the conduct of their business and affairs, in the interest of the people at large, and the promotion of the general public welfare.

§ 3. **The Interstate Commerce Commission Act** of the federal government followed in 1887, providing a National Commission to supervise and regulate interstate railroads and commerce. This act has been bitterly fought by railroads, and others affected thereby, and its validity, as the exercise of the police powers of Congress under the provision of the federal constitution, has been fully and completely demonstrated in a large volume of litigation, which need not be cited here, because it is foreign to the scope of this manual.

This act of Congress was followed by the Arbitration Act of 1888, which was replaced by an act covering the same subjects passed in 1889; by the Sherman Anti-Trust Act in 1890; by the Oleomargarine and Dairy Products Act of 1890; by the Safety Appliances Act of 1893; by the Bureau of Corporations Act of 1903; by the Elkins Act of 1903; by the Rate Regulation Act of 1906; by the Employers' Liability Acts of 1906 and 1908; by the Pure Food and Drugs Act of 1906, and other similar statutes, showing unmistakably that in both the state and federal governments

the large degree of liberty and irresponsibility which has heretofore existed in all business and commerce in which the general public are interested, and which affects the general public welfare and health, have, since 1887, gradually but surely and effectually passed away under the constant tightening of the reins of government under the exercise of the police power of the state and the federal governments.

The general policy of all these and similar laws seems to be to maintain the contention that the right to "life, liberty and property," guaranteed by the constitution is not an absolute right, but one which is subject to a wise and wholesome regulation by the government in the interest and welfare of the whole people, from whom, under the genius of our government, all power emanates, and in whom all power not specifically delegated resides.

§ 4. Similar Governmental Policy Prevails in Other Countries touching the interest and general welfare of the people at large. But a discussion of this matter is foreign to the purpose of the present manual, which aims to be practical, not learned, and we need not do more than refer the reader to the Prussian Act of 1875, the Building Act of Saxony of 1900, the Housing and Workingmen's Act of the Grand Duchy of Hesse, passed in 1902, and other similar acts.

CHAPTER II.

CONSTITUTIONAL PROVISIONS.

§ 5. Introductory.
§ 6. Alabama Constitution—(a) Distribution of Powers of Government.
§ 7. —— (b) Corporation Control—Railroads and Canals.
§ 8. California Constitution—(a) Distribution of Powers of Government.
§ 9. —— (b) Corporation Control.
§ 10. —— (c) Railroad Commission.
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§ 13. Illinois Constitution—(a) Distribution of Powers of Government.
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§ 15. Iowa Constitution—(a) Distribution of Powers of Government.
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§ 17. Kansas Constitution—(a) Distribution of Powers of Government.
§ 18. —— (b) Corporation Control.
§ 19. Louisiana Constitution—(a) Distribution of Powers of Government.
§ 20. —— (b) Corporation Control.
§ 21. —— (c) Railroad Commission.
§ 22. Minnesota Constitution—(a) Distribution of Powers of Government.
§ 23. —— (b) Corporation Control.
§ 24. Mississippi Constitution—(a) Distribution of Powers of Government.
§ 25. —— (b) Corporation Control.
§ 26. New York Constitution—(a) Distribution of Powers of Government.
§ 27. —— (b) Corporation Control.
§ 28. North Carolina Constitution—(a) Distribution of Powers of Government.
§ 29. —— (b) Corporation Control.
§ 30. Oklahoma Constitution—(a) Distribution of Powers of Government.
§ 31. —— (b) Corporation Control—Railroad and Public Service Corporations.
§ 32. —— —— (c) Corporation Commission.
§ 33. Oregon Constitution—(a) Distribution of Powers of Government.

§ 34. —— (b) Corporation Control.
§ 35. Texas Constitution—(a) Distribution of Powers of Government.
§ 36. —— (b) Corporation Control—(1) Railroads.
§ 37. —— —— (2) Private Corporations.
§ 38. Washington Constitution—(a) Distribution of Powers of Government.
§ 39. —— (b) Corporation Control.
§ 40. Wisconsin Constitution—(a) Distribution of Powers of Government.
§ 41. —— (b) Corporation Control.

§ 5. Introductory.—In this chapter there is given, for the convenience of reference by such as may desire it, the constitutional provisions of those states in which originated the volume of litigation and decisions growing out of the establishment of Railroad Commissions, and of Commissions with like powers and duties under another designation, for the purpose of rate regulation and control of common carriers and other public utilities,—which decisions are hereafter cited. These constitutional provisions given naturally fall under two heads, to wit:

(*a*) *Distribution of Powers* in the state government. This head is important, and has been drawn into consideration and discussion, in considering and determining the constitutionality of legislation establishing railroad and kindred commissions.[1]

(*b*) *Provisions Providing for a Commission* and rate and traffic regulation and control by the state legislature, or by a Commission or other body created by the legislature for that purpose. The absence of such a constitutional provision in no way affects the legality or constitutionality of legislation seeking to control these matters directly or through a Commission or other body created by the legislature for that purpose.[2]

[1] See *post*, c. 3, § 64.
[2] See *post*, c. 3, § 48.

§ 6. Alabama Constitution—(*a*) *Distribution of Powers of Government.*—§ 42. The powers of the government of the state of Alabama shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: That which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

§ 43. The government of the state except in the instances in this constitution hereinafter expressly directed or permitted, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative or judicial, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men.[8]

§ 7. —— (*b*) *Corporation Control—Railroads and Canals.*—§ 242. All railroads and canals, not constructed and used exclusively for private purposes, shall be public highways, and all railroads and canal companies shall be common carriers. Any association or corporation organized for the purpose shall have the right to construct and operate a railway between any points in this state, and connect at the state line with railroads of other states. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and each shall receive and transport the freight, passengers and cars, loaded or empty, of the others, without delay or discrimination.

§ 243. The power and authority of regulating railroad freight and passenger tariffs, the locating and building of passenger and freight depots, correcting

[8] Ala. Const. 1901, art. III.

abuses, preventing unjust discrimination and extortion and requiring reasonable and just rates of freight and passenger tariffs, are hereby conferred upon the legislature, whose duty it shall be to pass laws from time to time regulating freight and passenger tariffs, to prohibit unjust discrimination on the various railroads, canals and rivers of the state, and to prohibit the charging of other than just and reasonable rates, and enforce the same by adequate penalties.

§ 244. No railroad or other transportation company or corporation shall grant free passes or sell tickets or passes at a discount, other than as sold to the public generally, to any member of the legislature, or to any officer exercising judicial functions under the laws of this state; and any such member or officer receiving such pass or ticket for himself or procuring the same for another, shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding five hundred dollars and, at the discretion of the court trying the case, in addition to such fine, may be imprisoned for a term not exceeding six months, and upon conviction, shall be subject to impeachment and removal from office. The courts having jurisdiction shall give this law specially in charge to the grand juries, and when the evidence is sufficient to authorize an indictment, the grand jury must present a true bill. The circuit court or any court of like jurisdiction in any county into which such member or officer is transported by the use of such prohibited pass or ticket, shall have jurisdiction of the case, provided, only one prosecution shall be had for the same offense; and provided further, that the trial and judgment for one offense shall not bar a prosecution for another offense, when the same pass or ticket is used; and provided further, that nothing herein shall prevent a member of the legislature who is a *bona fide* employee

of a railroad or other transportation company or corporation at the time of his election, from accepting or procuring for himself or another, not a member of the legislature, or officer exercising judicial functions, a free pass over the railroads or other transportation company or corporation by which he is employed.

§ 245. No railroad company shall give or pay any rebate, or a bonus in the nature thereof, directly or indirectly, or do any act to mislead or deceive the public as to the real rates charged or received for freights or passage; and any such payments shall be illegal and void, and these prohibitions shall be enforced by suitable penalties.

§ 246. No railroad, canal or transportation company in existence at the time of the ratification of this constitution shall have the benefit of any future legislation by general or special laws, other than in execution of a trust created by law or by contract, except on condition of complete acceptance of all the provisions of this article.[4]

§ 8. California Constitution—(*a*) *Distribution of Powers of Government.*—The powers of the government of the state of California shall be divided into three separate departments—the legislative, executive, and judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except as in this constitution expressly directed or permitted.[5]

§ 9. —— (*b*) *Corporation Control.*—Section 1. Corporations may be formed under general laws, but shall not be created by special act. All laws now in force in this state concerning corporations, and all

[4] Ala. Const. 1901, art. XII.
[5] Cal. Const. 1879, art. III.

laws that may be hereafter passed pursuant to this section, may be altered from time to time or repealed.

Sec. 2. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

Sec. 3. Each stockholder of a corporation, or joint-stock association, shall be individually and personally liable for such proportion of all its debts and liabilities contracted or incurred, during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock, or shares of the corporation or association. The directors or trustees of corporations and joint-stock associations shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation or joint-stock association, during the term of office of such director or trustee.

Nothing in the preceding paragraph of this section shall be held to apply to any exposition company organized to promote and carry on any international exposition or world's fair within the state of California, and the liability of stockholders in any such exposition company shall be and the same is hereby limited to any amount not exceeding the par value of the stock of said corporation subscribed for by such stockholders [Amendment adopted November 3, 1908].

Sec. 4. The term corporations, as used in this article, shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships, and all corporations shall have the right to sue and be subject to be sued, in all courts, in like cases as natural persons.

Sec. 5. The legislature shall have no power to pass any act granting any charter for banking purposes,

but corporations or associations may be formed for such purposes under general laws, and the legislature shall provide for the classification of cities and towns by population for the purpose of regulating the business of banking. No corporation, association, or individual shall issue or put in circulation, as money, anything but the lawful money of the United States [Amendment adopted November 8, 1910].

Sec. 6. All existing charters, grants, franchises, special or exclusive privileges, under which an actual and *bona fide* organization shall not have taken place, and business been commenced in good faith, at the time of the adoption of this constitution, shall thereafter have no validity.

Sec. 7. The legislature shall not extend any franchise or charter, nor remit the forfeiture of any franchise or charter of any quasi-public corporation now existing or which shall hereafter exist under the laws of this state. The term of existence of any other corporation now or hereafter existing under the laws of this state, may be extended, at any time prior to the expiration of its corporate existence, for a period not exceeding fifty years from the date of such extension, by the vote or written consent of stockholders representing two-thirds of its capital stock or of two-thirds of the members thereof. A certificate of such vote or consent shall be signed and sworn to by the president and secretary, and by a majority of the directors of the corporation and filed and certified in the manner and upon payment of fees required by law for filing and certifying articles of incorporation, and thereupon the term of the corporation shall be extended for the period specified in such certificate, and such corporation shall thereafter pay all annual or other fees required by law to be paid by corporations [Amendment adopted November 3, 1908].

Sec. 8. The exercise of the right of eminent domain shall never be so abridged or construed as to prevent the legislature from taking the property and franchises of incorporated companies and subjecting them to public use the same as the property of individuals; and the exercise of the police power of the state shall never be so abridged or construed as to permit corporations to conduct their business in such manner as to infringe the rights of individuals or the general well-being of the state.

Sec. 9. No corporation shall engage in any business other than that expressly authorized in its charter or the law under which it may have been or may hereafter be organized; nor shall it hold for a longer period than five years any real estate, except such as may be necessary for carrying on its business.

Sec. 10. The legislature shall not pass any laws permitting the leasing or alienation of any franchise, so as to relieve the franchise or property held thereunder from the liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise, or any of its privileges.

Sec. 11. No corporation shall issue stock or bonds, except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebtedness of corporations shall not be increased, except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock, at a meeting called for that purpose, giving sixty days' public notice, as may be provided by law.

Sec. 12. In all elections for directors or managers of corporations every stockholder shall have the right to vote, in person or by proxy, the number of shares

of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner, except that members of co-operative societies formed for agricultural, mercantile, and manufacturing purposes may vote on all questions affecting such societies in manner prescribed by law.

Sec. 13. The state shall not, in any manner, loan its credit, nor shall it subscribe to or be interested in the stock of any company, association, or corporation.

Sec. 14. Every corporation other than religious, educational, or benevolent, organized or doing business in this state, shall have and maintain an office or place in this state for the transaction of its business, where transfers of stock shall be made, and in which shall be kept, for inspection by every person having an interest therein, and legislative committees, books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amounts owned by them, respectively; the amount of stock paid in, and by whom; the transfers of stock; the amount of its assets and liabilities, and the names and places of residence of its officers.

Sec. 15. No corporation organized outside the limits of this state shall be allowed to transact business within this state on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this state.

Sec. 16. A corporation or association may be sued in the county where the contract is made or is to be

performed, or where the obligation or liability arises or the breach occurs; or in the county where the principal place of business of such corporation is situated, subject to the power of the court to change the place of trial, as in other cases.

Sec. 17. All railroad, canal, and other transportation companies are declared to be common carriers, and subject to legislative control. Any association or corporation, organized for the purpose under the laws of this state, shall have the right to connect at the state line with railroads of other states. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and shall receive and transport each the other's passengers, tonnage, and cars, without delay or discrimination.

Sec. 18. No president, director, officer, agent, or employee of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, nor in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such company, except such interest in the business of transportation as lawfully flows from the ownership of stock therein.

Sec. 19. No railroad or other transportation company shall grant free passes, or passes or tickets at a discount, to any person holding any office of honor, trust, or profit in this state; and the acceptance of any such pass or ticket by a member of the legislature, or any public officer, other than Railroad Commissioner, shall work a forfeiture of his office.

Sec. 20. No railroad or other transportation company shall raise any rate of charge for the transportation of freight or passengers or any charge connected therewith or incidental thereto, under any circum-

stances whatsoever, except upon a showing before the Railroad Commission provided for in this constitution, that such increase is justified, and the decision of the said Commission upon the showing so made shall not be subject to review by any court except upon the question whether such decision of the Commission will result in confiscation of property [Amendment adopted October 10, 1911].

Sec. 21. No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of the same classes of freight or passengers within this state. It shall be unlawful for any railroad or other transportation company to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates. Provided, however, that upon application to the Railroad Commission provided for in this constitution such company may, in special cases, after investigation, be authorized by such Commission to charge less for longer than for shorter distances for the transportation of persons or property and the Railroad Commission may from time to time prescribe the extent to which such company may be relieved from the prohibition to charge less for the longer than for the shorter haul. The Railroad Commission shall have power to authorize the issuance of excursion and commutation tickets at special rates. Nothing herein contained shall be construed to prevent the Railroad Commission from ordering and compelling any railroad or other transportation company

to make reparation to any shipper on account of the rates charged to said shipper being excessive or discriminatory, provided no discrimination will result from such reparation [Amendment adopted October 10, 1911].[6]

§ 10. —— (*c*) *Railroad Commission.* — Sec. 22. There is hereby created a Railroad Commission which shall consist of five members and which shall be known as the Railroad Commission of the state of California. The Commission shall be appointed by the governor from the state at large; provided, that the legislature, in its discretion, may divide the state into districts for the purpose of such appointments, said districts to be as nearly equal in population as practicable; and provided further that the three commissioners in office at the time this section takes effect shall serve out the term for which they were elected, and that two additional commissioners shall be appointed by the governor immediately after the adoption of this section, to hold office during the same term. Upon the expiration of said term, the term of office of each commissioner thereafter shall be six years, except the commissioners first appointed hereunder after such expiration, one of whom shall be appointed to hold office until January 1, 1917, two until January 1, 1919, and two until January 1, 1921. Whenever a vacancy in the office of commissioner shall occur, the governor shall forthwith appoint a qualified person to fill the same for the unexpired term. Commissioners appointed for regular terms shall, at the beginning of the term for which they are appointed, and those appointed to fill vacancies, shall, immediately upon their appointment, enter upon the duties of their offices. The legislature shall fix the salaries of the commis-

[6] Cal. Const. 1879, art. XII.

sioners, but pending such action the salaries of the commissioners, their officers and employees shall remain as now fixed by law. The legislature shall have the power, by a two-thirds vote of all members elected to each house, to remove any one or more of said commissioners from office for dereliction of duty or corruption or incompetency. All of said commissioners shall be qualified electors of this state, and no person in the employ of or holding any official relation to any person, firm or corporation, which said person, firm or corporation is subject to regulation by said Railroad Commission and no person owning stock or bonds of any such corporation or who is in any manner pecuniarily interested therein, shall be appointed to or hold the office of Railroad Commissioner. No vacancy in the Commission shall impair the right of the remaining commissioners to exercise all the powers of the Commission. The act of a majority of the commissioners when in session as a board shall be deemed to be the act of the Commission; but any investigation, inquiry or hearing which the Commission has power to undertake or to hold may be undertaken or held by or before any commissioner designated for the purpose by the Commission, and every order made by a commissioner so designated, pursuant to such inquiry, investigation or hearing, when approved or confirmed by the Commission ordered filed in its office, shall be deemed to be the order of the Commission.

Said Commission shall have the power to establish rates of charges for the transportation of passengers and freight by railroads and other transportation companies, and no railroad or other transportation company shall charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or freight, or for any service in connection therewith, between the points

named in any tariff of rates, established by said Commission, than the rates, fares and charges which are specified in such tariff. The Commission shall have the further power to examine books, records and papers of all railroad and other transportation companies; to hear and determine complaints against railroad and other transportation companies; to issue subpoenas and all necessary process and send for persons and papers; and the Commission and each of the commissioners shall have the power to administer oaths, take testimony and punish for contempt in the same manner and to the same extent as courts of record; the Commission may prescribe a uniform system of accounts to be kept by all railroad and other transportation companies.

No provision of this constitution shall be construed as a limitation upon the authority of the legislature to confer upon the Railroad Commission additional powers of the same kind or different from those conferred herein which are not inconsistent with the powers conferred upon the Railroad Commission in this constitution, and the authority of the legislature to confer such additional powers is expressly declared to be plenary and unlimited by any provision of this constitution.

The provisions of this section shall not be construed to repeal in whole or in part any existing law not inconsistent herewith, and the "Railroad Commission Act" of this state approved February 10, 1911, shall be construed with reference to this constitutional provision and any other constitutional provision becoming operative concurrently herewith. And the said act shall have the same force and effect as if the same had been passed after the adoption of this provision of the constitution and of all other provisions adopted

concurrently herewith, except that the three commissioners referred to in said act shall be held and construed to be the five commissioners provided for herein [Amendment adopted October 10, 1911].

Sec. 23. Every private corporation, and every individual or association of individuals, owning, operating, managing, or controlling any commercial railroad, interurban railroad, street railroad, canal, pipeline, plant, or equipment, or any part of such railroad, canal, pipe-line, plant or equipment within this state, for the transportation or conveyance of passengers, or express matter, or freight of any kind, including crude oil, or for the transmission of telephone or telegraph messages, or for the production, generation, transmission, delivery or furnishing of heat, light, water or power or for the furnishing of storage or wharfage facilities, either directly or indirectly, to or for the public, and every common carrier, is hereby declared to be a public utility subject to such control and regulation by the Railroad Commission as may be provided by the legislature, and every class of private corporations, individuals, or associations of individuals hereafter declared by the legislature to be public utilities shall likewise be subject to such control and regulation. The Railroad Commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the state of California, and to fix the rates to be charged for commodities furnished, or services rendered by public utilities as shall be conferred upon it by the legislature, and the right of the legislature to confer powers upon the Railroad Commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this constitution.

From and after the passage by the legislature of laws conferring powers upon the Railroad Commission respecting public utilities, all powers respecting such public utilities vested in boards of supervisors, or municipal councils, or other governing bodies of the several counties, cities and counties, cities and towns, in this state, or in any Commission created by law and existing at the time of the passage of such laws, shall cease so far as such powers shall conflict with the powers so conferred upon the Railroad Commission; provided, however, that this section shall not affect such powers of control over any public utility vested in any city and county, or incorporated city or town as, at an election to be held pursuant to laws to be passed hereafter by the legislature, a majority of the qualified electors voting thereon of such city and county, or incorporated city or town, shall vote to retain, and until such election such powers shall continue unimpaired; but if the vote so taken shall not favor the continuation of such powers they shall thereafter vest in the Railroad Commission as provided by law; and provided, further, that where any such city and county or incorporated city or town shall have elected to continue any powers respecting public utilities, it may, by vote of a majority of its qualified electors voting thereon, thereafter surrender such powers to the Railroad Commission in the manner to be prescribed by the legislature; or if such municipal corporation shall have surrendered any powers to the Railroad Commission, it may, by like vote, thereafter reinvest itself with such power. Nothing in this section shall be construed as a limitation upon any power conferred upon the Railroad Commission by any provision of this constitution now existing or adopted concurrently herewith [Amendment adopted October 10, 1911].

Sec. 24. The legislature shall pass all laws necessary for the enforcement of the provisions of this article.[7]

§ 11. Georgia Constitution—(*a*) *Distribution of Powers of Government.*—Par. XXIII. The legislative, judicial and executive powers shall forever remain separate and distinct, and no person discharging the duty of one, shall, at the same time, exercise the functions of either of the others, except as herein provided.[8]

§ 12. ——(*b*) *Corporation Control.*—Par. I. The powers and authority of regulating railroad freights and passenger traffic, [to] prevent unjust discrimination, and require reasonable and just rates of freight and passenger tariff, are hereby conferred upon the General Assembly whose duty it shall be to pass laws from time to time, to regulate freight and passenger tariffs, to prohibit unjust discrimination on [in] the fares of this state, and to prohibit said road from charg-

[7] Cal. Const. 1879, as amended 1911.

"Plenary power" is given to the Railroad Commission by Constitution, § 23. But this power given by the constitution is limited by the act of the legislature known as the Public Utilities Act, in that all acts of the Railroad Commission are made reviewable by the courts. See *post*, c. 9.

The plenary power given to the Railroad Commission does not enable it to deal with interstate commerce. Congress has plenary power over interstate commerce, and incidentally thereto it may regulate the persons, companies, and corporations engaged in interstate business, and may prescribe the number of consecutive hours an employee of a carrier engaged in interstate business may be required to remain on duty, and where Congress does so legislate, its act supersedes and displaces any and all state legislation and all regulations by the Railroad Commission on the subject. See State ex rel. Atkinson v. Northern Pac. R. Co., 53 Wash. 673, 102 Pac. 876.

The state Railroad Commission cannot make any regulations or do any act that interferes with interstate commerce. See *post*, c. 3, § 65.

[8] Ga. Const. 1877, art. I, § 1.

ing other than just and reasonable rates, and enforce the same by adequate penalties.[9]

§ 13. Illinois Constitution—(*a*) *Distribution of Powers of Government.*—The powers of the government of this state are divided into three distinct departments—the legislative, executive and judicial; and no person, or collection of persons, being one of these departments, shall exercise any power properly belonging to either of the others, except as herein expressly directed and permitted.[10]

§ 14. —— (*b*) *Corporation Control.*—§ 15. The General Assembly shall pass laws to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passengers on the different railroads of this state, and enforce such laws by adequate penalties, to the extent, if necessary for that purpose, of forfeiture of their property and franchise.[11]

§ 15. Iowa Constitution—(*a*) *Distribution of Powers of Government.*—§ 1. The powers of the government of Iowa shall be divided into three separate departments: the legislative, the executive, and the judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except in cases hereinafter expressly directed and permitted.[12]

§ 16. —— (*b*) *Corporation Control.*—There is no provision in the constitution relative to the control of railroads and other public utilities.

[9] Ga. Const., art. IV, § 2.
[10] Ill. Const. 1870, art. III.
[11] Ill. Const. 1870, art. XI.
[12] Iowa Const. 1857, art. III.

§ 17. Kansas Constitution—(*a*) *Distribution of Powers of Government.*—The Territorial Government Act of 1854, section 6, provides for three departments of government, to wit: the Legislative Department, the Executive Department and the Judicial Department; The constitutions of 1855, 1857 and 1858 especially retaining this division of powers in article III of these respective constitutions. The present constitution, of 1859, preserves this distribution of powers without specific designation by the provisions in article I as to the Executive Department; in article II as to the Legislative Department; and in article III as to the Judicial Department.[13]

§ 18. —— (*b*) *Corporation Control.*—There is no provision in the constitution relative to the control of railroads and other public utilities.

§ 19. Louisiana Constitution—(*a*) *Distribution of Powers of Government.*—The powers of the government of the state of Louisiana shall be divided into three distinct departments, each of them to be confided to a separate body of magistrates, to wit: those which are legislative, to one, those which are executive to another, and those which are judicial to another.[14]

No one of these departments, nor any person or collection of persons holding office in one of them shall exercise power properly belonging to either of the others, except in the instances hereinafter expressly directed and permitted.[15]

§ 20. —— (*b*) *Corporation Control.*—The exercise of the police power of the state shall never be abbreviated nor so construed as to permit corpora-

[13] Kan. Const. 1859.
[14] La. Const. 1898, art. XVI.
[15] La. Const. 1898, art. XVII.

tions to conduct their business in such a manner as to infringe the equal rights of individuals or the general well-being of the state.[16]

§ 21. —— (*c*) *Railroad Commission.*[17]—Art. 283. A Railroad, Express, Telephone, Telegraph, Steamboat, and Other Water Craft, and Sleeping-car Commission, is hereby created; to be composed of three members, to be held from the districts hereinafter named, at the time fixed for the congressional election in 1898. Of the three commissioners elected in 1898, one shall serve two years, one shall serve four years, and one shall serve six years, the term each is to serve to be determined by lot; thereafter the commissioners from each district shall be elected for a term of six years. They shall be known as the Railroad Commission of Louisiana. The Commission shall meet and open an office and have its domicile at Baton Rouge, and shall elect one of their number chairman, and may appoint a secretary at a salary of fifteen hundred dollars per annum, and may meet and hold regular or special hearings at such other places as they may find necessary. No member of this convention shall be eligible to election or appointment as a member of said Commission prior to 1908 (Amendment 1900).

Art. 284. The powers and authority is hereby fixed in the Commission, and it is hereby made its duty, to adopt, change or make reasonable and just rates, charges and regulations, to govern and regulate railroad, steamboat and other water craft, and sleeping-car, freight and passenger tariffs and services, express rates, and telephone and telegraph charges, to correct abuses, and prevent unjust discrimination and extortion in the rates of the same, on the different rail-

[16] La. Const. 1898, art. 263.

[17] La. Const. 1898, as amended in 1900, 1907 and 1908.

roads, steamboat and other water craft, sleeping-car, express, telephone and telegraph lines in this state, and to prevent such companies from charging any greater compensation in the aggregate for the like kind of property or passengers, or messages, for a shorter than a longer distance over the same line, unless authorized by the Commission to do so in special cases; to require all railroads to build and maintain suitable depots, switches and appurtenances, whereafter the same are reasonably necessary at stations, and to inspect railroads and to require them to keep their tracks and bridges in a safe condition, and to fix and adjust rates between branches or short lines and the great trunk lines with which they connect, and to enforce the same by having the penalties hereby prescribed inflicted through the proper courts having jurisdiction.

The Commission shall have power to adopt and enforce such reasonable rules, regulations, and modes of procedure as it may deem proper for the discharge of its duties, and to hear and determine complaints that may be made against the classifications or rates it may establish, and to regulate the mode and manner of all investigations and hearings of railroad companies and other parties before it, in the establishment of rates, orders, charges, and other acts, required or authorized by these provisions. They shall have power to summon and compel the attendance of witnesses, to swear witnesses and to compel the production of books and papers, to take testimony under commission, and to punish for contempt as fully as is provided by law, for district courts (Amendment 1900).

Art. 285. If any railroad, express, telephone, telegraph, steamboat or other water craft, sleeping-car company, or other party in interest, be dissatisfied with the decision or fixing of any rate, classification,

rule, charge, order, act or regulation, adopted by the Commission, such party may file a petition setting forth the cause or causes of objection to such decision, act, rule, rate, charge, classification, or order, or to either or all of them in a court of competent jurisdiction at the domicile of the Commission, against said Commission as defendant, and either party to said action may appeal the case to the supreme court of the state, without regard to the amount involved and all such cases, both in the trial and appellate courts, shall be tried summarily, and by preference over all other cases. Such cases may be tried in the court of the first instance, either in chambers or at term time; provided, all such appeals shall be returned to the supreme court within ten days after the decision of the lower court; and where the Commission appeals, no bond shall be required. No bond shall be required of said Commission in any case, nor shall advance costs or securities for costs be required of the Commission (Amendment 1900).

Art. 286. If any railroad, express, telephone, telegraph, steamboat, or other water craft, or sleeping-car company, subject hereto, directly or indirectly, or by any special rate, rebate or other device, shall intentionally charge, demand, collect or receive from any person, firm or corporation, a greater or less compensation for any service rendered by it, than it charges, demands, or receives from any other person, firm or corporation, for doing like or contemporaneous service, or shall violate any of the rates, charges, orders, rules or decisions of said Commission, such railroad, steamboat, or other water craft, express, telegraph, telephone, or sleeping-car company, shall forfeit and pay to the state not less than one hundred dollars, nor more than five thousand dollars to be recovered before any court of competent jurisdiction, at the suit of the state, at the domicile of the Commission.

Provided, that every order or decision of the Commission, fixing and establishing a rate or charge for the transportation of passengers or freight, or for the transmission of messages or conversation by telephone or telegraph, within the state, shall go into effect at such time as may be fixed by the Commission, and shall remain in effect and be complied with unless and until set aside by the Commission, or by a final judgment of a court of competent jurisdiction, rendered on final trial in a suit to set aside and annul the same.

Provided, that whenever any rate, charge, rule, regulation, order or decision, of the Commission, is contested in court, as provided by this constitution, or by any amendment thereto, the same is maintained on final trial, by a court of competent jurisdiction, the railroad, express, telephone, telegraph, steamboat or other water craft, or sleeping-car company, or corporation, contesting the same, shall forfeit and pay, to the state of Louisiana, the sum of not less than ten dollars nor more than fifty dollars per day, for each day that the putting into effect and operation of the rate, order, charge, rule, regulation, or decision, of the Commission may have been suspended by such suit, to be found and adjudged, by the court in which suit may be brought, and in all such cases, the said court shall, in its judgment, maintaining the said rate, charge, rule, regulation, order, or decision, enter up a decree and judgment against the plaintiff therein, condemning such plaintiff to pay to the state of Louisiana the amount of the said penalty or forfeiture so found and adjudged by it, which amount after deducting therefrom the attorney's fees provided by article 288 of this constitution, shall, when collected, be paid into the state treasury for account of the general school fund of the state.

The power and authority of the Commission shall affect and include not only the transportation of pas-

sengers, freight, express matter, and telegraph and telephone messages, between points within the state, and the use of such instruments within the state, but shall also affect and include all matters and things connected with and concerning the service to be given by railroads, express, telephone, telegraph, steamboat and other water craft, and sleeping-car companies and corporations in the state, and their operation within the state (Amendment 1908).

Art. 287. Until otherwise provided by law, the members of the Commission shall each receive a salary of three thousand dollars per annum, payable monthly on his own warrant and their actual traveling expenses and those of their secretaries; which expenses, and the salaries of the latter, shall be paid on the warrant of the chairman of the Commission on a sworn statement of their correctness.

Nothing herein shall prevent the railroad, express, telegraph, telephone, and steamboat or other water craft, or other companies, from serving free of cost, or at reduced rates, the state or any city, parish, or town government, or any charitable purpose, or any fair or exposition, or any destitute or indigent person or the issuance of mileage or excursion tickets; nor to prevent railroads, steamboats or other water craft from giving free transportation to ministers of religion or inmates of hospitals, or to railroad officers, agents, employees, attorneys, stockholders, or directors, unless otherwise provided by this constitution (Amendment 1900).

Art. 288. The General Assembly may add to or enlarge the powers and duties of said Commission, or confer other powers and duties on them. They may also provide additional clerical or other assistants that may be deemed necessary for the discharge of the duties of said Commission, and may add other

penalties, to make the work of said Commission effective. It shall be the duty of the attorney general, and the various district attorneys to aid said Commission in all legal matters, for which they shall receive not exceeding twenty-five per cent of all fines and forfeitures collected by them; provided the Commission may employ other attorneys in lieu of the official on like terms.

No person in the service of or attorney for, any railroad, express, telephone, telegraph, steamboat or other water craft, sleeping-car company or corporation, or pecuniary interest in such company or corporation, shall hold the office of Commissioner.

The fines collected, after paying the attorney's fees and costs of suits, in which the Commission may be cast for costs, shall be paid into the state treasury (Amendment 1907).

§ 22. Minnesota Constitution—(*a*) *Distribution of Powers of Government.*—§ 1. The powers of government shall be divided into three distinct departments—legislative, executive and judicial; and no person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others, except in the instances expressly provided in this constitution.[18]

§ 23. —— (*b*) *Corporation Control.*—There is no provision in the constitution relative to the control of railroads and other public utilities.

§ 24. Mississippi Constitution—(*a*) *Distribution of Powers of Government.*—§ 1. The powers of the government of the state of Mississippi shall be divided into three distinct departments, and each of them confided to a separate magistracy, to wit: Those which

[18] Minn. Const. 1857, art. III.

are legislative, to one; those which are judicial, to another; and those which are executive, to another.

§ 2. No person or collection of persons, being one, or belonging to one, of these departments, shall exercise any power properly belonging to either of the others. The acceptance of an office in either of said departments shall, of itself, and at once, vacate any and all offices held by the person so accepting in either of the other departments.[19]

§ 25. —— (*b*) *Corporation Control.*—§ 186. The legislature shall pass laws to prevent abuses, unjust discrimination and extortion in all charges of express, telephone, sleeping-car, telegraph and railroad companies, and shall enact laws for the supervision of railroads, express, telephone, telegraph, sleeping-car companies and other common carriers in this state, by Commission or otherwise, and shall provide adequate penalties, to the extent, if necessary for that purpose, of forfeiture of its franchises.

§ 188. No railroad or other transportation company shall grant free passes or tickets, or passes or tickets at a discount, to members of the legislature, or any state, district, county or municipal officers, except Railroad Commissioners. The legislature shall enact suitable laws for the detection, prevention and punishment of violations of this provision.

§ 195. Express, telegraph, telephone, and sleeping-car companies are declared common carriers in their respective lines of business and subject to liability as such.

§ 198. The legislature shall enact laws to prevent all trust conventions, contracts and agreements inimical to the public welfare.

[19] Miss. Const. 1890, art. I.

§ 199. The term "corporation" used in this article shall include all associations and all joint-stock companies for pecuniary gain, having privileges not possessed by individuals and partnerships.[20]

§ 26. New York Constitution—(*a*) *Distribution of Powers of Government.*—New York constitution, without special designation, recognizes a division of the powers of the state into the legislative (article III), the executive (article IV), and the judicial (article VI).[21]

§ 27. —— (*b*) *Corporation Control.*—There is no specific provision in the constitution regarding the regulation and control of railroads and other public utilities.

§ 28. North Carolina Constitution—(*a*) *Distribution of Powers of Government.*—There is no specific distribution of powers of government except that the distribution into legislative, executive and judicial is recognized as provided in articles II, III and IV of that instrument.[22]

§ 29. —— (*b*) *Corporation Control.*—There is no provision in the constitution relative to the control of railroads and other public utilities.

§ 30. Oklahoma Constitution—(*a*) *Distribution of Powers of Government.*—§ 1. The powers of the government of the state of Oklahoma shall be divided into three separate departments, the legislative, executive, and judicial and except as provided in this constitution, the legislative and executive, and judicial departments of government shall be separate and distinct

[20] Miss. Const. 1890, art. VII.
[21] N. Y. Const. 1904.
[22] N. C. Const. 1876.

and neither shall exercise the powers properly belonging to either of the others.[28]

§ 31. —— (*b*) *Corporation Control — Railroad and Public Service Corporations.*—§ 2. Every railroad, oil pipe, car, express, telephone or telegraph corporation or association organized or authorized to do a transportation or transmission business under the laws of this state for such purpose, shall, each respectively, have the right to construct and operate its lines between any point in the state, and as such to connect at the state line with like lines, and every such company shall have the right with its road or line, to intersect, connect with, or cross any railroad or such line.

§ 3. Every railroad, car, or express company shall, each respectively, receive and transport without delay or discrimination each other's cars, loaded or empty, tonnage, and passengers, under such rules and regulations as may be prescribed by law or any commission created by this constitution or by act of the legislature for that purpose.

§ 4. All oil pipe companies shall be subject to the reasonable control and regulation of the Corporation Commission, and shall receive and transport each other's tonnage or oils, or commodities, under such rules and regulations as shall be prescribed by law or such Commission.

§ 5. All telephone and telegraph lines, operated for hire, shall each respectively, receive and transmit each other's messages without delay or discrimination, and make physical connections with each other's lines, under such rules and regulations as shall be prescribed by law, or by any commission created by this constitution, or any act of the legislature, for that purpose.

[28] Okl. Const. 1907, art. IV.

§ 6. Railroads heretofore constructed, or which may hereafter be constructed in this state, are hereby declared public highways. Every railroad or other public service corporation organized or doing business in this state, under the laws or authority thereof, shall have and maintain a public office or place in this state, for the transaction of its business, where transfers of stock shall be made, and where shall be kept, for inspection by the stockholders of such corporation, books, in which shall be recorded the amount of capital stock subscribed, the names of the owners of stock, the amounts owned by them, respectively; the amount of stock paid, and by whom; the transfer of said stock, with the date of transfer; the amount of its assets and liabilities, and the names and places of residence of its officers, and such other matters required by law or by order of the Corporation Commission. The directors of every railroad company, or other public service corporation, shall hold at least one meeting annually in this state, such notice of which shall be given thirty days previous, and the president or superintendent of every railroad company and other public service corporation organized or doing business in this state under the laws of this state or the authority thereof, shall report annually under oath, and make such other report as may be required by law or order of the Corporation Commission to said Commission and acts and doings, which report shall include such matters relating to roads and public service corporations as may be prescribed by law. The legislature shall pass all necessary laws enforcing, by suitable penalties all the provisions of this section.[24]

§ 32. —— (*c*) *Corporation Commission.*—§ 16. The qualifications of such commissioners shall be as follows: to be resident citizens of this state for over

[24] Okl. Const. 1907, art. X.

two years next preceding the election, and qualified voters under the constitution and laws, and not less than thirty years of age; nor shall such commissioners, or either of them, be, directly or indirectly, interested in any railroad, street railway, traction line, canal, steamboat, pipe-line, car line, sleeping-car line, car association, express line, telephone or telegraph line, operated for hire, in this state, or out of it, or any stock, bond, mortgage, security, or earnings of any such railroad, street railway, traction line, canal, steamboat, pipe-line, car line, sleeping-car line, car association, express line, telephone or telegraph line, compress or elevator companies; and if such commissioner shall voluntarily become so interested, his office shall become vacant; and if any corporation commissioner shall become so interested otherwise than voluntarily, he shall, within a reasonable time, devest himself of such interest; and failing to do this, his office shall become vacant. Nor shall any such commissioner hold any other office under the government of the United States, or of this state or any other state government, and shall not, while such commissioner, engage in any occupation or business inconsistent with his duties as such commissioner.

§ 17. Before entering upon the duties of his office, each of said commissioners shall take and subscribe to the oath of office as prescribed in this constitution and shall, in addition thereto, swear that he is not, directly or indirectly, interested in any railroad, street railway, traction line, canal, steamboat, pipe-line, car line, sleeping-car line, car association, express line, telephone or telegraph line, nor in the bonds, stocks, mortgages, securities, contract or earnings of any railroad, street railway, traction line, canal, steamboat, pipe-line, car line, sleeping-car line, car association, express line, telephone or telegraph line; and that he

will, to the best of his ability, faithfully and justly execute and enforce the provisions of this constitution, and all the laws of this state concerning railroads, street railways, traction lines, canals, steamboats, pipe-lines, car lines, sleeping-car lines, car associations, express lines, telephone and telegraph lines, compress and elevator companies, and all other corporations over which said Commission has jurisdiction, which oath shall be filed with the Secretary of State.

§ 18. The Commission shall have the power and authority and be charged with the duty of supervising, regulating, and controlling all transportation and transmission companies doing business in this state, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses and preventing unjust discrimination and extortion by such companies; and to that end the Commission shall, from time to time, prescribe and enforce against such companies, in the manner hereinafter authorized, such rates, charges, classifications of traffic, and rules and regulations, and shall require them to establish and maintain all such public service, facilities, and conveniences as may be reasonable and just, which said rates, charges, classifications, rules, regulations, and requirements, the Commission may, from time to time, alter or amend. All rates, charges, classifications, rules and regulations adopted, or acted upon, by any such company, inconsistent with those prescribed by the Commission, within the scope of its authority, shall be unlawful and void. The Commission shall also have the right, at all times, to inspect the books and papers of all transportation and transmission companies doing business in this state, and to require from such companies, from time to time, special reports and statements, under oath, concern-

ing their business; it shall keep itself fully informed of the physical condition of all the railroads of the state, as to the manner in which they are operated, with reference to the security and accommodation of the public, and shall, from time to time, make and enforce such requirements, rules, and regulations as may be necessary to prevent unjust or unreasonable discrimination and extortion by any transportation or transmission company in favor of, or against any person, locality, community, connecting line, or kind of traffic, in the matter of car service, train or boat schedule, efficiency of transportation, or transmission, or otherwise, in connection with the public duties of such company. Before the Commission shall prescribe or fix any rate, charge or classification of traffic, and before it shall make any order, rule, regulation, or requirement directed against any one or more companies by name, the company or companies to be affected by such rate, charge, classification, order, rule, regulation, or requirement, shall first be given, by the Commission, at least ten days' notice of the time and place when and where the contemplated action in the premises will be considered and disposed of, and shall be afforded a reasonable opportunity to introduce evidence and to be heard thereon, to the end that justice may be done, and shall have process to enforce the attendance of witnesses; and before said Commission shall make or prescribe any general order, rule, regulation, or requirement, not directed against any specific company or companies by name, the contemplated order, rule, regulation, or requirement shall first be published in substance, not less than once a week, for four consecutive weeks, in one or more of the newspapers of general circulation published in the county in which the capitol of this state may be located, together with the notice of the time and place, when and where the Commission will hear any objections

which may be urged by any person interested, against the proposed order, rule, regulation, or requirement; and every such general order, rule, regulation, or requirement, made by the Commission, shall be published at length, for the time and in the manner above specified, before it shall go into effect, and shall also, so long as it remains in force, be published in each subsequent annual report of the Commission. The authority of the Commission (subject to review on appeal as hereinafter provided) to prescribe rates, charges, and classifications of traffic, for transportation and transmission companies, shall, subject to regulation by law, be paramount; but its authority to prescribe any other rules, regulations, or requirements for corporations or other persons shall be subject to the superior authority of the legislature to legislate thereon by general laws: Provided, however, that nothing in this section shall impair the rights which have heretofore been, or may hereafter be, conferred by law upon the authorities of any city, town, or county to prescribe rules, regulations, or rates of charges to be observed by any public service corporation in connection with any services performed by it under a municipal or county franchise granted by such city, town, or county, so far as such services may be wholly within the limits of the city, town, or county granting the franchise. Upon the request of the parties interested, it shall be the duty of the Commission, as far as possible, to effect, by mediation, the adjustment of claims, and the settlement of controversies, between transportation or transmission companies and their patrons or employees.

§ 18a. The Corporation Commission shall organize by electing one of its members chairman and appoint a secretary, whose salary shall be fixed by the legislature. A majority of said Commission shall constitute a quorum, and the concurrence of the majority

of said Commission shall be necessary to decide any question.

§ 18b. As used in this article, the term "company" shall include associations and joint-stock companies having any power or privileges not possessed by individuals, and include all corporations except municipal corporations and public institutions owned or controlled by the state.

§ 19. In all matters pertaining to the public visitation, regulation, or control of corporations, and within the jurisdiction of the Commission, it shall have the attendance of witnesses, and the production of papers, to punish for contempt any person guilty of disrespectful or disorderly conduct in the presence of the Commission while in session, and to enforce compliance with any of its lawful orders or requirements by adjudging, and by enforcing its own appropriate process, against the delinquent or offending party or company (after it shall have been first duly cited, proceeded against by due process of law before the Commission sitting as a court, and afforded opportunity to introduce evidence and to be heard, as well as against the validity, justness, or reasonableness of the order or requirement alleged to have been violated, as against the liability of the company for the alleged violation), such fines or other penalties as may be prescribed or authorized by this constitution or by-law. The Commission may be vested with such additional powers, and charged with such other duties (not inconsistent with this constitution) as may be prescribed by law, in connection with the visitation, regulation, or control of corporations, or with the prescribing and enforcing of rates and charges to be observed in the conduct of any business where the state has the right to prescribe the rates and charges in connection therewith, or with the assessment of the property of cor-

porations, or the appraisement of their franchises, for taxation, or with the investigation of the subject of taxation generally. Any corporation failing or refusing to obey any valid order or requirement of the Commission, within reasonable time, not less than ten days, as shall be fixed in the order, may be fined by the Commission (proceeding by due process of law as aforesaid) such sum, not exceeding five hundred dollars, as may be prescribed or authorized by law; and each day's continuance of such failure or refusal, after due service upon such corporation of the order or requirement of the Commission, shall be a separate offense: Provided, that should the operation of such order or requirement be suspended, pending any appeal therefrom, the period of such suspension shall not be computed against the company in the matter of its liability to fines or penalties.

§ 20. From any action of the Commission prescribing rates, charges, or classifications of traffic, or affecting the train schedule of any transportation company, or requiring additional facilities, conveniences, or public service of any transportation or transmission company, or refusing to approve a suspending bond, or requiring additional security thereon or an increase thereof, as hereinafter provided for, an appeal (subject to such reasonable limitations as to time, regulations as to procedure and provisions as to cost, as may be prescribed by law) may be taken by the corporation whose rates, charges, or classifications of traffic, schedule, facilities, conveniences, or service, are affected, or by any person deeming himself aggrieved by such action, or (if allowed by law) by the state. Until otherwise provided by law, such appeal shall be taken in the manner in which appeals may be taken to the supreme court from the district courts, except that such an appeal shall be of right, and the supreme court may provide by rule for proceedings in the

matter of appeals in any particular in which the existing rules of law are inapplicable. If such appeal be taken by the corporation whose rates, charges, or classifications of traffic, schedules, facilities, conveniences, or service are affected, the state shall be made the appellee; but, in the other cases mentioned, the corporation so affected shall be made the appellee. The legislature may also, by general laws, provide for appeals from any other action of the Commission, by the state, or by any person interested irrespective of the amount involved. All appeals from the Commission shall be to the supreme court only, and in all appeals to which the state is a party, it shall be represented by the attorney general or his appointed representative. No court of this state (except the supreme court, by way of appeals as herein authorized) shall have jurisdiction to review, correct, or annul any action of the Commission within the scope of its authority, or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the Commission in the performance of its official duties: Provided, however, that the writs of *mandamus* and prohibition shall lie from the supreme court to the Commission in all cases where such writs, respectively, would lie to any inferior court or officer.

§ 21. Upon the granting of an appeal, a writ of *supersedeas* may be awarded by the supreme court, suspending the operation of the action appealed from until the final disposition of the appeal; but, prior to the final reversal thereof by the supreme court, no action of the Commission prescribing or affecting the rates, charges, or classifications of traffic of any transportation or transmission company shall be delayed, or suspended, in its operation, by reason of any appeal, until a suspending bond shall first have been executed and filed with, and approved by the Commission (or approved, on review, by the supreme court),

payable to the state, and sufficient in amount and security to insure the prompt refunding, by the appealing corporation to the parties entitled thereto, of all charges which such company may collect or receive, pending the appeal, in excess of those fixed, or authorized, by the final decision of the court on appeal. The Commission, upon the execution of such bond, shall forthwith require the appealing company, under penalty of the immediate enforcement (pending the appeal and notwithstanding any supersedeas), of the order or requirement appealed from, to keep such accounts, and to make to the Commission, from time to time, such reports, verified by oath, as may, in the judgment of the Commission suffice to show the amounts being charged or received by the company, pending the appeal, in excess of the charge allowed by the action of the Commission appealed from, together with the names and addresses of the persons to whom such overcharges will be refundable in case the charges made by the company, pending the appeal, be not sustained on such appeal; and the Commission shall also, from time to time, require such company, under like penalty, to give additional security on, or to increase the said suspending bond, whenever, in the opinion of the Commission, the same may be necessary to insure the prompt refunding of the overcharges aforesaid. Upon the final decision of such appeal, all amounts which the appealing company may have collected, pending the appeal, in excess of that authorized by such final decision, shall be promptly refunded by the company to the parties entitled thereto, in such manner and through such methods of distribution as may be prescribed by the Commission, or by law. All such appeals, affecting rates, charges, or classifications of traffic, shall have precedence upon the docket of the supreme court, and shall be heard and disposed of promptly by the court,

irrespective of its place of session, next after the habeas corpus, and state cases already on the docket of the court.

§ 22. In no case of appeal from the Commission, shall any new or additional evidence be introduced in the supreme court; but the chairman of the Commission, under the seal of the Commission, shall certify to the supreme court all the facts upon which the action appealed from was based and which may be essential for the proper decision of the appeal, together with such of the evidence introduced before, or considered by, the Commission as may be selected, specified, and required to be certified, by any party in interest, as well as such other evidence, so introduced, or considered as the Commission may deem proper to certify. The Commission shall, whenever an appeal is taken therefrom, file with the record of the case, and as a part thereof, a written statement of the reasons upon which the action appealed from was based, and such statement shall be read and considered by the supreme court, upon disposing of the appeal. The supreme court shall have jurisdiction, on such appeal, to consider and determine the reasonableness and justness of the action of the Commission appealed from, as well as any other matter arising under such appeal: Provided, however, that the action of the Commission appealed from shall be regarded as *prima facie* just, reasonable, and correct; but the court may, when it deems necessary, in the interest of justice, remand to the Commission any case pending on appeal, and require the same to be further investigated by the Commission, and reported upon to the court (together with a certificate of such additional evidence as may be tendered before the Commission by any party in interest), before the appeal is finally decided.

§ 23. Whenever the court, upon appeal, shall reverse an order of the Commission affecting the rates,

charges, or the classifications of traffic of any transportation or transmission company, it shall, at the same time, substitute therefor such orders as, in its opinion, the Commission should have made at the time of entering the order appealed from; otherwise the reversal order shall not be valid. Such substituted order shall have the same force and effect (and none other) as if it had been entered by the Commission at the time the original order appealed from was entered. The right of the Commission to prescribe and enforce rates, charges, classifications, rules and regulations affecting any or all actions of the Commission theretofore entered by it and appealed from, but based upon circumstances or conditions different from those existing at the time the order appealed from was made, shall not be suspended or impaired by reason of the pendency of such appeal, but no order of the Commission, prescribing or altering such rates, charges, classifications, rules, or regulations, shall be retroactive.

§ 24. The right of any person to institute and prosecute in the ordinary courts of justice, any action, suit, or motion against any transportation or transmission company, for any claim or cause of action against such company, shall not be extinguished or impaired, by reason of any fine or other penalty which the Commission may impose, or be authorized to impose, upon such company because of its breach of any public duty, or because of its failure to comply with any order or requirement of the Commission; but, in no such proceeding by any person against such corporation, nor in any collateral proceeding shall the reasonableness, justness, or validity of any rate, charge, classification of traffic, rule, regulation, or requirement, theretofore prescribed by the Commission, within the scope of its authority, and then in force, be questioned: Provided, however, that no case based

upon or involving any order of the Commission shall be heard or disposed of, against the objection of either party, so long as such order is suspended in its operation by an order of the supreme court as authorized by this constitution or by any law passed in pursuance thereof.

§ 25. The Commission shall make annual reports to the governor of its proceedings, in which reports it shall recommend, from time to time, such new or additional legislation in reference to its powers or duties, or the creation, supervision, regulation or control of corporations, or to the subject of taxation, as it may deem wise or expedient, or as may be required by law.

§ 26. It shall be the duty of each and every railway company, subject to the provisions herein, to provide and maintain adequate, comfortable, and clean depots, and depot buildings, at its several stations, for the accommodation of passengers, and said depot buildings shall be kept well lighted and warmed for the comfort and accommodation of the traveling public; and all such roads shall keep and maintain adequate and suitable freight depots and buildings for the receiving, handling, storing, and delivering of all freight handled by such roads.

§ 27. In case any railroad company shall hereafter seek to cross at grade with its track or tracks, the track or tracks of another railroad, the railroad seeking to cross at grade, within a reasonable time, shall be compelled to interlock or protect such crossings by safety devices, to be designated by the Commission, and all costs of appliance, together with the expenses of putting them in, shall be borne equally by each company: Provided, that this act shall not apply to crossings of sidetracks.

§ 28. The commissioners, or either of them, or such persons as they may employ therefor, shall have

the right, at such times as they may deem necessary, to inspect the books and papers of any railroad company or other public service corporation, and to examine, under oath, any officer, agent, or employee of such corporations in relation to the business and affairs of the same. If any railroad company or other public service corporation shall refuse to permit the commissioners, or either of them, or any person authorized thereto, to examine its books and papers, such railroad company or other public service corporation shall, until otherwise provided by law, for each offense, pay to the state of Oklahoma not less than one hundred and twenty-five dollars, nor more than five hundred dollars, for each day it shall so fail or refuse, and the officer or other person so refusing shall be punished as the law shall prescribe.

§ 29. The Commission shall ascertain, and enter of record, the same to be a public record, as early as practicable, the amount of money expended in construction and equipment per mile of every railroad and other public service corporation in Oklahoma, the amount of money expended to procure the right of way, and the amount of money it would require to reconstruct the roadbed, track, depots, and transportation facilities, and to replace all the physical properties belonging to the railroad or other public service corporation. It shall also ascertain the outstanding bonds, debentures, and indebtedness, and the amount, respectively, thereof, when issued, and rate of interest, when due, for what purposes issued, how used, to whom issued, to whom sold, and the price in cash, property, or labor, if any received therefor, what became of the proceeds, by whom the indebtedness is held, the amount purporting to be due thereon, the floating indebtedness of the company, to whom due, and his address, the credits due on it, the property on hand belonging to the railroad company or other

public service corporation, and the judicial or other sales of said road, its property or franchises, and the amounts purporting to have been paid, and in what manner paid therefor. The Commission shall also ascertain the amounts paid for salaries to the officers of the railroad, or other public service corporation, and the wages paid its employees. For the purpose in this section named, the Commission may employ experts to assist them when needed, and from time to time, as the information required by this section is obtained, it shall communicate the same to the attorney general by report, and file a duplicate thereof with the state examiner and inspector for public use, and said information shall be printed, from time to time, in the annual report of the Commission.

§ 30. No transportation or transmission company shall charge or receive any greater compensation, in the aggregate, for transporting the same class of passengers or property, or for transmitting the same class of messages, over a shorter than a longer distance, along the same line, and in the same direction—the shorter being included in the longer distance; but this section shall not be construed as authorizing any such company to charge or receive as great compensation for a shorter as for a longer distance. The Commission may, from time to time, authorize any such company to disregard the foregoing provisions of this section, by charging such rates as the Commission may prescribe as just and equitable between such company and the public, to or from any junctional or competitive points or localities, or where the competition of points located without this state may make necessary the prescribing of special rates for the protection of the commerce of this state; but this section shall not apply to mileage tickets, or to any special excursion, or commutation rates, or to special rates for services rendered to this state, or to the United States, or in

the interest of some public object, when such tickets or rates shall have been prescribed or authorized by the Commission.

§ 31. No railroad, oil pipe-line, telephone, telegraph, express or car corporation organized under the laws of any other state, or of the United States, and doing business, or proposing to do business in this state, shall be entitled to the benefit of the right of eminent domain in this state until it shall have become a body corporate pursuant to or in accordance with the laws of this state.

§ 32. The said Commission shall have power, and it is hereby made its duty, to investigate all through freight or passenger rates on railroads in this state, and when the same are, in the opinion of the Commission, excessive or levied or laid in violation of the interstate commerce law, or the rules and regulations of the Interstate Commerce Commission, the proper officials of the railroads are to be notified of the facts and requested to reduce them or make the proper corrections, as the case may be. When the rates are not changed, or the proper corrections are not made according to the request of the Commission, it shall be the duty of the latter to notify the Interstate Commerce Commission and to make proper application to it for relief, and the attorney general or such other persons as may be designated by law shall represent the Commission in all such matters.

§ 33. Any person, firm, or corporation owning or operating any coal, lead, iron, or zinc mine, or any sawmill, grain elevator, or other industry, whenever the Commission shall reasonably determine that the amount of business is sufficient to justify the same, near or within a reasonable distance of any track, may at the expense of such person, firms, or corporation build and keep in repair a switch leading from such

railroad to such mine, sawmill, elevator or other industry; such railroad company shall be required to furnish the switch stand and frog and other necessary material for making connection with such sidetrack or spur under such reasonable terms, conditions and regulations as the said Commission may prescribe, and shall make connection therewith. The party owning such line, sawmill, elevator or other industry shall pay the actual cost thereof. If any railroad company, after proper demand therefor is made, shall refuse to furnish said material for making said connection and put the same in place, or after the building of such switch, shall fail or refuse to operate the same, such railroad company failing or refusing for a reasonable time, shall forfeit and pay to the party or corporation aggrieved, the sum of five hundred dollars for each and every offense, to be recovered by civil action in any court of competent jurisdiction; and every day of such refusal on the part of the railroad company to operate such switch as aforesaid, after such demand is made, shall be deemed a separate offense.

§ 34. As used in this article, the term "transportation company" shall include any company, corporation, trustee, receiver, or any other person owning, leasing, or operating for hire, a railroad, street railway, canal, steamboat line, and also any freight-car company, car association, express company, sleeping-car company, car corporation, or company, trustee or person in any way engaged in such business as a common carrier over a route acquired in whole or in part under the right of eminent domain, or under any grant from the government of the United States; the term "rate" shall be construed to mean rate of charge for any service rendered, or to be rendered; the terms "rate," "charge" and "regulation," shall include joint rates, joint charges, and joint regulations, respectively; the term "transmission company" shall

include any company, receiver or other person, owning, leasing, or operating for hire any telegraph or telephone line; the term "freight" shall be construed to mean any property transported or received for transportation, by any transportation company. The term "public service corporation" shall include all transportation and transmission companies, all gas, electric light, heat, and power companies, and all persons authorized to exercise the right of eminent domain, or to use or occupy any right of way, street, alley, or public highway, whether along, over, or under the same, in a manner not permitted to the general public; the term "person" as used in this article, shall include individuals, partnerships and corporations, in the singular as well as plural number; the term "bond" shall mean all certificates or written evidences of indebtedness issued by any corporation and secured by mortgage or trust deed. The term "frank" shall mean any writing or token issued by or under authority of a transmission company, entitling the holder to any service from such company free of charge.

The provisions of this article shall always be so restricted in their application as not to conflict with any of the provisions of the constitution of the United States, and as if the necessary limitations upon their interpretation had been herein expressed in each case.[25]

§ 33. Oregon Constitution—(*a*) *Distribution of Powers of Government.*—The powers of the government shall be divided into three separate departments, the legislative, the executive (including the administrative), and the judicial; and no person charged with official duties under one of these departments shall

[25] Okl. Const. 1907, art. X.

exercise any of the functions of another, except as in this constitution expressly provided.[26]

§ 34. —— (*b*) *Corporation Control.*—There is no provision in the constitution relative to the control of railroads and other public utilities.

§ 35. Texas Constitution — (*a*) *Distribution of Powers of Government.*—There is no especial distribution of powers further than provision for legislative, executive and judicial departments in articles III, IV and V of that instrument.[27]

§ 36. —— (*b*) *Corporation Control*—(1) *Railroads.*—§ 1. Any railroad corporation or association, organized under the law for the purpose, shall have the right to construct and operate a railroad between any points within this state, and to connect at the state line with railroads of other states. Every railroad company shall have the right, with its road, to intersect, connect with, or cross any other railroad; and shall receive and transport each the other's passengers, tonnage, and cars, loaded or empty, without delay or discrimination, under such regulations as shall be prescribed by law.

§ 2. Railroads heretofore constructed, or that may hereafter be constructed, in this state are hereby declared public highways, and railroad companies common carriers. The legislature shall pass laws to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this state; and shall from time to time pass laws establishing reasonable maximum rates of charges for the transportation of pas-

[26] Or. Const. 1857, art. III.
[27] Tex. Const. 1876.

sengers and freight on said railroads, and enforce all such laws by adequate penalties.

§ 3. Every railroad or other corporation, organized or doing business in this state under the laws or authority thereof, shall have and maintain a public office or place in this state for the transaction of its business, where transfers of stock shall be made, and where shall be kept, for inspection by the stockholders of such corporations, books, in which shall be recorded the amount of capital stock subscribed, the names of the owners of the stock, the amounts owned by them respectively, the amount of stock paid, and by whom, the transfer of said stock, with the date of the transfer, the amount of its assets and liabilities, and the names and places of residence of its officers. The directors of every railroad company shall hold one meeting annually in this state, public notice of which shall be given thirty days previously, and the president, or superintendent shall report annually, under oath, to the comptroller or governor, their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law. The legislature shall pass laws enforcing by suitable penalties the provisions of this section.

§ 4. The rolling stock and all other movable property belonging to any railroad company or corporation in this state shall be considered personal property, and its real and personal property, or any part thereof, shall be liable to execution and sale in the same manner as the property of individuals; and the legislature shall pass no laws exempting any such property from execution and sale.

§ 5. No railroad or other corporation, or the lessees, purchasers, or managers of any railroad corporation, shall consolidate the stock, property, or franchises of such corporation, with, or lease or pur-

chase the works or franchises of, or in any way control any railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line.

§ 6. No railroad company organized under the laws of this state shall consolidate, by private or judicial sale or otherwise, with any railroad company organized under the laws of any other state or of the United States.

§ 7. No law shall be passed by the legislature granting the right to construct and operate a street railroad within any city, town, or village, or upon any public highway, without first acquiring the consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad.

§ 8. No railroad corporation in existence at the time of the adoption of this constitution shall have the benefit of any future legislation, except on condition of complete acceptance of all the provisions of this constitution applicable to railroads.

§ 9. No railroad hereafter constructed in this state shall pass within a distance of three miles of any county seat without passing through the same, and establishing and maintaining a depot therein, unless prevented by natural obstacles, such as streams, hills, or mountains: Provided, such town or its citizens shall grant the right of way through its limits and sufficient ground for ordinary depot purposes.[28]

§ 37. —— —— (2) *Private Corporations.*—§ 3. The right to authorize and regulate freights, tolls,

[28] Tex. Const. 1876, art. X.

wharfage, or fares levied and collected, or proposed to be levied and collected, by individuals, companies, or corporations, for the use of highways, landings, wharves, bridges, and ferries devoted to public use, has never been and shall never be relinquished or abandoned by the state, but shall always be under legislative control and depend upon legislative authority.

§ 4. The first legislature assembled after the adoption of this constitution shall provide a mode of procedure by the attorney general and district or county attorneys, in the name and behalf of the state, to prevent and punish the demanding and receiving or collection of any and all charges as freight, wharfage, fares, or tolls, for the use of property devoted to the public, unless the same shall have been specially authorized by law.

§ 5. All laws granting the right to demand and collect freights, fares, tolls, or wharfage, shall at all times be subject to amendment, modification, or repeal by the legislature.

§ 6. No corporation shall issue stock or bonds except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void.

§ 7. Nothing in this article shall be construed to devest or affect rights guaranteed by any existing grant or statute of this state or of the republic of Texas.[29]

§ 38. **Washington Constitution**—(*a*) *Distribution of Powers of Government.*—The present constitution recognizes without a distinct apportionment, the division of the government into the legislative depart-

[29] Tex. Const. 1876, art. XII.

ment (article II), the executive department (article III), and the judicial department (article IV).[80]

§ 39. —— (*b*) *Corporation Control.*—§ 13. All railroads, canals, and other transportation companies are declared to be common carriers and subject to legislative control. . . . .

§ 14. No railroad company or other common carrier shall combine or make any contract with the owner of any vessel that leaves port or makes port within this state, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying.

§ 15. No discrimination in charge or facilities for transportation shall be made by any railroad or other transportation company between places or persons or in the facilities for the transportation of the same classes of freight or passengers within this state, or coming from or going to another state. Persons and property transported over any railroad or by any other transportation company, or individual, shall be delivered at any station, landing or port at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station, port or landing. Excursion and commutation tickets may be issued at special rates.

§ 18. The legislature shall pass laws establishing reasonable maximum rates of charge for the transportation of passengers and freight, and to correct abuses and to prevent discrimination and extortion in the rates of freight and passenger tariffs on the different railroads and other common carriers, in the state, and shall enforce such laws by adequate penal-

[80] Wash. Const. 1889.

ties. A railroad and transportation commission may be established, and its powers and duties fully defined by law.

§ 20. No railroad or other transportation company shall grant free passes, or sell tickets or passes at a discount, other than as sold to the public generally, to any member of the legislature, or to any person holding any public office within this state. The legislature shall pass laws to carry this provision into effect.

§ 21. Railroad companies, now or hereafter organized or doing business in this state shall allow all express companies organized or doing business in this state transportation over all lines of railroad, owned or operated by such companies upon equal terms with any other express company; and no railroad corporation organized or doing business in this state shall allow any express corporation or company any facilities, privileges, or rates for transportation of men or materials or property carried by them, or for doing the business of such express companies, not allowed to all express companies.

§ 22. Monopolies and trusts shall never be allowed in this state, and no incorporated company, copartnership, or association of persons in this state shall directly or indirectly combine or make any contract with any other company, foreign or domestic, through their stockholders or the trustees, or assignees of such stockholders, or with any copartnership or association of persons, or in any manner whatever for the purpose of fixing the price or limiting the production or regulating the transportation of any product or commodity. The legislature shall pass laws for the enforcement of this section by adequate penalties and in case of

incorporated companies, if necessary for that purpose, may declare a forfeiture of the franchises.[21]

§ 40. Wisconsin Constitution — (*a*) *Distribution of Powers of Government.*—Divisions of power not specifically made, but the common divisions into legislative, executive and judicial is recognized in articles IV, V and VII; the administrative being coupled with the executive, article VI.[22]

§ 41. —— (*b*) *Corporation Control.*—There is no provision in the constitution relative to the control of railroads and other public utilities.

[21] Wash. Const. 1889, art. XII.
[22] Wis. Const. 1848.

CHAPTER III.

CONSTITUTIONALITY OF ACT.

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§ 42. Introductory.—It is not the purpose or object of this chapter to give an exhaustive consideration

to the question of the constitutionality of legislation creating Boards of Railroad Commissions, or other like boards with the same power and design to serve the same or similar ends. The purpose is simply to collect, and arrange under appropriate heads or divisions, some of the decisions in litigation growing out of legislation establishing such Commissions, in which the reasons are given for holding the statute constitutional or unconstitutional, as the case may be.

§ 43. The California Public Utilities Act. — A highly important question arising under this act is: Does the act combine in a legal and constitutional sense, legislative, executive, and judicial functions of government, and empower the Railroad Commission to exercise the same? In the absence of any adjudication by the state courts upon this question we have to look to decisions of the courts of other states, and of the federal courts, in which acts essentially similar and largely identical with the California Act were under consideration.

The Public Utilities Act of California, in common with the Oregon Railroad Commission Act, and other acts of kindred character passed in other states, contains many features and regulations quite in common with the Interstate Commerce Act of Congress,[1] and its amendments.[2] The distinctive features between the state acts and the federal act consist in the fact that in the latter the Commission is empowered to fix the rates, which rates when fixed by it are made *prima facie* reasonable and just, and must be conformed to, and, if controverted by an interested party or corporation, the burden is cast upon such person or corporation to institute the proper proceedings or suit

[1] Act February 4, 1887, c. 104; 24 Stats. at Large, 379; U. S. Comp. Stats. 1901, 3154; 3 Fed. Stats. Ann. 809–850.

[2] 1 Supp. U. S. Rev. Stats., pp. 529, 684, 891.

and to overcome the *prima facie* case by proof to the contrary; while in the state acts the Commission's orders and directions as to changes to be made in rates, where found to be unreasonable or unjust, the rates named by the Commission are deemed to be *prima facie* reasonable and just, and where an interested party or corporation refuses to obey the orders of the Commission fixing the rates, the Commission is authorized to enforce obedience by suit, in which the party or corporation has the burden of overcoming the *prima facie* case of the reasonableness of the rates directed by the Commission for adoption, and must do so in its defense or the Commission's orders will stand. The matter of difference consists principally in the procedure.[3]

That the express purpose of the California Act is to regulate transportation of commerce and common carriers within the state, and as to state business only, is apparent both from the title of the act and from the provisions thereof.[4] It applies solely to the state business, and does not seek to regulate commerce or traffic originating or destined beyond the borders of the state, and for this reason it is thought to be a valid exercise of the powers of the legislature.[5] By reason of the fact that the California Act does not attempt to regulate or interfere with interstate commerce, it is thought not to be open to the objection that it is an encroachment upon the constitutional authority of Congress in that, in practical application, it will interfere with interstate commerce.[6]

[3] See Oregon R. & Nav. Co. v. Campbell, 173 Fed. 957, 970.

[4] See Oregon R. & Nav. Co. v. Campbell, 173 Fed. 957, 970.

[5] See State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 92 Pac. 606.

See, also, authorities cited in the discussion of sections 53–63, this chapter.

[6] See Oregon R. & Nav. Co. v. Campbell, 173 Fed. 957, 978 et seq.

Nor is the act unconstitutional upon the ground that it provides for the taking of the property of persons or corporations without due process of law.[7]

§ 44. —— Functions and Powers of the Commission.—The functions and powers of the Railroad Commission, under the California Act, are administrative or ministerial, not legislative or judicial,[8] because the authority conferred relates merely to the execution of the law.[9] The granting of this power, as will

[7] State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 92 Pac. 606.

[8] Chicago, B. & Q. R. Co. v. Jones, 149 Ill. 361, 37 N. E. 247, 41 Am. St. Rep. 278, 24 L. R. A. 141; Missouri K. & T. R. Co. v. State, 25 Okl. 437, 106 Pac. 858; Atchison, T. & S. F. R. Co. v. State, 28 Okl. 805, 115 Pac. 873; State ex rel. Board of Railroad Commrs. v. Duluth, W. & P. R. Co., 25 S. D. 106, 125 N. W. 565; Railroad Commission of Texas v. Chicago, R. I. & G. R. Co., 102 Tex. 393, 117 S. W. 794.

"A Board of Railroad Commissioners is merely an administrative board created by the state for carrying into effect the will of the state as expressed by its legislature." Mr. Justice Brewer, in Railroad Commission Cases, 116 U. S. 307, 6 Sup. Ct. 334, 29 L. ed. 636. See Morgan's La. & T. R. & S. S. Co. v. Railroad Commission, 109 La. 247, 33 So. 24; Reagan v. Farmers' L. & T. Co., 154 U. S. 394, 14 Sup. Ct. 1047, 38 L. ed. 1114.

An act creating a Railroad Commission and conferring upon it powers to regulate rates does not confer upon such board executive or judicial powers, notwithstanding the fact the board is required to exercise judgment and discretion, and to make orders for the regulation and control of railroad and other common carriers. State ex rel. Taylor v. Northern Pac. R. Co., 76 Kan. 467, 92 Pac. 606.

The Railroad Commission is not invested with judicial powers notwithstanding the fact that it is required to exercise judgment and discretion and to make orders for the regulation and control of railroads and other common carriers and public utilities. State ex rel. Taylor v. Missouri Pac. R. Co., 761 Kan. 467, 92 Pac. 606.

[9] Chicago, B. & Q. R. Co. v. Jones, 149 Ill. 361, 37 N. E. 247, 41 Am. St. Rep. 278, 24 L. R. A. 141.

Where the powers of a railroad or other Commission of Public Utilities are unmistakably limited to the regulation of carriers and rates between points within the state (as in Oregon Railroad Commission Act, Laws 1907, p. 67), any order made by such body under its authority conferred by such statute is presumptively limited by the same restrictions, and the fact that such order may incidentally

be seen in the next section, is clearly within the jurisdiction of the legislature, for the reason that the granting of legislative power to do certain things carries with it the power to use all proper and necessary means to accomplish the end sought.[10] The constitutional provision conferring power upon the legislature to regulate railroad rates and passenger tariffs is for the purpose of preventing unjust discrimination and requiring reasonable and just freight and tariff rates, makes it the duty of the legislature to pass laws in furtherance of this provision for the purpose of giving protection to citizens against unjust rates for transportation of freights and passengers over the railroads of the state, and to prevent unjust discrimination even though the rates charged are reasonable and just.[11]

No valid objection can be made against the appointment of a Railroad Commission and a delegation to it of the power to fix rates, etc., on account of the general features of such act; those by which the state has created the Railroad Commission and intrusted it with the duty of prescribing rates of fare and freight, as well as other regulations for the management of the railroads of the state.[12] Under the act, the Rail-

induce a change in the movement of interstate commerce or a change in interstate rates will not render such order, or the statute under which it is made, unconstitutional as an infringement of the commerce clause in the federal constitution. Oregon R. & Nav. Co. v. Campbell, 173 Fed. 957.

[10] Chicago, B. & Q. R. Co. v. Jones, 149 Ill. 361, 37 N. E. 247, 41 Am. St. Rep. 278, 24 L. R. A. 141.

[11] Georgia R. Co. v. Smith, 70 Ga. 694.

[12] See remarks of Mr. Justice Brewer in Railroad Commission Cases, 116 U. S. 307, 6 Sup. Ct. 334, 29 L. ed. 636.

Where the rate or charge fixed and the actual transportation is exclusively confined to the limits of the territory of the state, it is wholly within the power of the Commission under the act, for the reason that it does not affect interstate commerce, but unless exclusively within the state, it is subject to the constitutional provision concerning commerce among states. Wabash, St. L. & P. R. Co. v. Illinois, 118 U. S. 557, 7 Sup. Ct. 4, 30 L. ed. 244.

road Commissioners are officers appointed to carry into execution the laws passed by the legislature, are constitutional officers,[13] and the power conferred upon such Commission to fix rates, etc., is administrative in its character, has no relation to or dependence upon the executive or legislative power, or either of them, as one of the three governmental powers, because the function of such a Commission is simply that of carrying into effect the legislative will, and its operation is a part of the legislative act.[14]

[13] Georgia R. Co. v. Railroad Commission, 70 Ga. 694.

[14] Reagan v. Farmers' L. & T. Co., 154 U. S. 362, 14 Sup. Ct. 1047, 38 L. ed. 1014; Railroad Commission Cases, 116 U. S. 307, 6 Sup. Ct. 334, 29 L. ed. 636; State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 476, 92 Pac. 606.

Regarding the power of the Commission under the act to exercise executive functions may be considered the case determining that question raised under the Oregon Act. Under the constitution of Oregon the executive department of government includes also the administrative (see *ante*, c. 2, § 33), and this widens very largely the scope of the functions of that department under the Oregon constitution. There is no such enlargement of the scope of the functions of that department under the provisions of the California statute. (See *post*, c. 6, § 112 et seq.). Under the Oregon Railroad Commission Act, the Commission is charged with supervising and doing many things which are merely administrative. Some are possibly executive upon a strict division of powers. But this alone ought not to invalidate the law, for the reason that it is impossible to fix any exact boundary line dividing the constitutional powers; that is to say, in providing for the innumerable exigencies arising for governmental supervision and control, it is not always possible to place the authority in every detail with the appropriate department of government. So that, as to the minor matters, it ought not to be considered inimical to the constitution to give into the charge of one department what appropriately belongs to another. The essential thing is that there shall not be a usurpation of the functions of one department by another department, so as practically to destroy or seriously to endanger the policy of a tripartite division of powers. There are many things that belong absolutely to the one department or the other. Where these are plain and important, they should be assigned to the appropriate department for administration, and if not so assigned, the law should not stand, because of the hurtful encroachment of the proper domain of the proper department. But where the assignment of power is scarcely distinguishable, or where it works

§ 45. Legislative Powers.—The state legislature may exercise all powers not conferred upon the federal government, or which are not prohibited by the constitution.[15] In the absence of congressional prohibition,[16] a state may enact laws regulating matters

no practical encroachment upon the functions of another department, there is no reason why the law should not stand. Oregon R. & Nav. Co. v. Campbell, 173 Fed. 957, 977.

[15] Ruggles v. People, 91 Ill. 256.

"The legislature may legislate upon any and all subjects not prohibited by express words or by necessary implications. The courts look to the constitution to determine, not what it authorizes, but what it forbids." State ex rel. Taylor v. Northern Pac. R. Co., 76 Kan. 467, 489, 92 Pac. 606; citing Township of Pine Grove v. Talcott, 86 U. S. 666, 22 L. ed. 227; State v. Forkner, 94 Iowa, 1, 62 N. W. 772, 28 L. R. A. 206.

The state legislature may properly exercise all the reserve powers—that is to say, those powers not delegated to the federal government, save only those which the people have withheld. The sole power for the regulation of commerce within the state resides in the state legislature; and this power is expressly recognized by Congress in the passage of the act regulating commerce of February 4, 1887 (1 Supp. U. S. Rev. Stats., p. 529). Oregon R. & Nav. Co. v. Campbell, 173 Fed. 957.

[16] Congress, in its discretion, may take entire charge of the subject of the equipment, etc., of interstate cars, and establish such regulations as are necessary and proper for the protection of those engaged in interstate commerce; and where Congress fails to make any provision or regulations touching a matter, the state may properly do so in so far as the traffic is confined within its borders. Chicago, R. I. & P. R. Co. v. Arkansas, 219 U. S. 453, 31 Sup. Ct. 275, 55 L. ed. 290. See Mobile County v. Kimball, 102 U. S. 691, 26 L. ed. 238; Gulf, C. & S. F. R. Co. v. Hefley, 158 U. S. 98, 15 Sup. Ct. 802, 39 L. ed. 910; Western Union Tel Co. v. James, 162 U. S. 656, 16 Sup. Ct. 934, 40 L. ed. 1107; Chicago, M. & St. P. R. Co. v. Solan, 169 U. S. 133, 18 Sup. Ct. 289, 42 L. ed. 688; Western Union Tel. Co. v. Kansas, 216 U. S. 27, 30 Sup. Ct. 190, 54 L. ed. 366; Reid v. Colorado, 187 U. S. 137, 23 Sup. Ct. 92, 47 L. ed. 108, 12 Am. Cr. Rep. 506; Missouri, K. & T. R. Co. v. Haber, 169 U. S. 613, 18 Sup. Ct. 488, 42 L. ed. 878.

As to the scope of the commerce clause of the federal constitution as affecting regulation of instrumentalities and regulating the distribution of railroad fuel cars, see Interstate Commerce Commission v. Illinois Cent. R. Co., 215 U. S. 452, 30 Sup. Ct. 155, 54 L. ed. 280.

Carrier engaged in interstate commerce cannot lawfully charge, collect or receive anything except money for transportation. Louis-

which are legal in their nature, which laws tend to enforce the proper performance by interstate carriers of duties arising within the state, and tending to facilitate traffic, notwithstanding the fact that such state laws may incidentally affect interstate commerce.[17] Under the exercise of its police power, the state may reasonably regulate as to the place and manner of the delivery of merchandise, moved in the channels of interstate commerce, so long as such regulations do not interfere with such commerce.[18]

The power of the state to regulate and control the operation of railroads and other carriers within the state is fixed in the legislature; the extent of such control and regulation must be left to the legislature to determine, subject always to the constitutional

ville & N. R. Co. v. Mottley, 219 U. S. 467, 31 Sup. Ct. 265, 55 L. ed. 297.

[17] St. Louis & S. F. R. Co. v. State, 26 Okl. 62, 107 Pac. 929. See State v. Northern Pac. R. Co., 53 Wash. 673, 102 Pac. 876.

See, also, *post*, § 65, this chapter. As to test whether Congress or a state can regulate commerce in question, see Independent T. L. Co. v. Lake Superior Lumber and Box Co. (Wis.), 131 N. W. 408.

Interstate railroads and employees wholly engaged in local business are not affected by an act making it unlawful for any carrier who is subject to the act to permit employees to remain on duty for longer than a prescribed period. Baltimore & O. R. Co. v. Interstate Commerce Commission, 221 U. S. 612, 31 Sup. Ct. 621, 55 L. ed. 878.

Abrogation of fellow-servant rule as to railroad employees does not offend against the equal protection laws clause of the federal constitution because construed as applying to the foreman of a section crew charged with keeping track in repair. Mobile, J. & K. C. R. Co. v. Turnipseed, 219 U. S. 35, 31 Sup. Ct. 136, 55 L. ed. 78. See Louisville & N. R. Co. v. Melton, 218 U. S. 36, 30 Sup. Ct. 676, 54 L. ed. 921.

As to regulation by Congress of liability of connecting carriers, see Atlantic Coast L. R. Co. v. Riverside Mills, 219 U. S. 186, 31 Sup. Ct. 164, 55 L. ed. 167.

[18] St. Louis & S. F. R. Co. v. State, 26 Okl. 62, 107 Pac. 929.

guaranties for the protection of property.[19] The constitution imposes no limitation upon the power of the legislature to enact laws. Its power is absolute and plenary,[20] subject only to the restriction that the legislature shall not interfere with the plenary power of Congress.[21] "The legislative power to prescribe rates which railroad companies may charge for the carriage of freight or passengers[22] exists beyond ques-

[19] State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 92 Pac. 606.

As to legislative control over corporations, see Current Law, vol. 1, p. 735; vol. 3, p. 893; vol. 5, p. 785; vol. 7, p. 884; vol. 9, p. 749; vol. 12, p. 1551; vol. 14, p. 1582.

As to police regulation of electric companies, see 31 L. R. A. 807.

[20] See Wadsworth v. Union Pac. R. Co., 18 Colo. 600, 33 Pac. 515, 36 Am. St. Rep. 309, 23 L. R. A. 812. See Leavenworth County v. Miller, 7 Kan. 479, 12 Am. Rep. 425; Harding v. Funk, 8 Kan. 315; State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 488, 92 Pac. 606.

Authority of the state to exercise the power to regulate rates and service of railroad and other carriers is not to be restricted by mere implication from the express provision of the state constitution. See Minneapolis, St. P. & Ste. Marie R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 915.

The legislative declaration that a law is necessary for immediate preservation of public peace, health, and safety, adding an emergency clause to put it in operation, is not refused in the courts, and is not an infringement of the above provision of the constitution. Cadderly v. Portland, 44 Or. 150, 74 Pac. 710.

[21] See authorities *ante*, c. 2, footnote 7.

[22] See 10 Cent. Dig., fol. 740, § 82; 4 Den. Dig., p. 1399, § 61.

A railroad should from the public nature of the business transacted by it and the interest which the public have in its operation, be subject, as to its said business, to state regulations, which may be exercised either directly by the legislative authority or by administrative bodies endowed with powers to that end. See Chicago, B. & Q. R. Co. v. Iowa, 94 U. S. 155, sub nom. Chicago, B. & Q. R. Co. v. Cutts, 24 L. ed. 94; Peik v. Chicago & N. W. R. Co., 94 U. S. 164, 24 L. ed. 97; Chicago, M. & St. P. R. Co. v. Ackley, 94 U. S. 179, 24 L. ed. 99; Winona & St. P. R. Co. v. Blake, 94 U. S. 180, 24 L. ed. 99; Stone v. Wisconsin, 94 U. S. 181, 24 L. ed. 102; Ruggles v. Illinois, 108 U. S. 526, 2 Sup. Ct. 832, 27 L. ed. 818; Stone v. Farmers'

tion, and its exercise has been uniformly upheld by the courts,[22] and this power the lawmakers may delegate to a Commission, which has been frequently

Loan & T. Co., 116 U. S. 307, 6 Sup. Ct. 334, 388, 1191, 29 L. ed. 636; Stone v. Illinois C. R. Co., 116 U. S. 347, 6 Sup. Ct. 348, 29 L. ed. 650; Stone v. New Orleans & N. E. R. Co., 116 U. S. 352, 6 Sup. Ct. 349, 29 L. ed. 651; Dow v. Beidelman, 125 U. S. 680, 1 Inter. Com. Rep. 56, 8 Sup. Ct. 1028, 31 L. ed. 841; Charlotte, C. & A. R. Co. v. Gibbes, 142 U. S. 386, 12 Sup. Ct. 255, 35 L. ed. 1051; Chicago & G. T. R. Co. v. Wellman, 143 U. S. 339, 12 Sup. Ct. 400, 36 L. ed. 176; Pearsall v. Great Northern R. Co., 161 U. S. 646, 16 Sup. Ct. 705, 40 L. ed. 838; Louisville & N. R. Co. v. Kentucky, 161 U. S. 677, 16 Sup. Ct. 714, 40 L. ed. 849; Wisconsin, M. & P. R. Co. v. Jacobson, 179 U. S. 287, 21 Sup. Ct. 115, 45 L. ed. 194; Minneapolis & St. L. R. Co. v. Minnesota, 186 U. S. 257, 22 Sup. Ct. 900, 46 L. ed. 1151; Minneapolis & St. L. R. Co. v. Minnesota, 193 U. S. 53, 24 Sup. Ct. 396, 48 L. ed. 614; Chicago, B. & Q. R. Co. v. Illinois, 200 U. S. 561, 605, 26 Sup. Ct. 341, 50 L. ed. 596; Atlantic Coast Line R. Co. v. Florida, 203 U. S. 256, 27 Sup. Ct. 108; Seaboard Air Line R. Co. v. Florida, 203 U. S. 261, 27 Sup. Ct. 109.

Railroads are the subject of state regulation within the state by the legislature direct, or by the legislature through a Railroad Commission. See Rio Grande So. R. Co. v. Campbell, 44 Colo. 1, 69 Pac. 986; Felt v. Denver & R. G. R. Co., 48 Colo. 249, 110 Pac. 215, 1136.

[22] State has power to limit railroad charges for transportation, etc., within its jurisdiction, except in those cases where it is restrained by contract or by the power of Congress to regulate foreign or interstate commerce. Stone v. Farmers' L. & T. Co., 116 U. S. 307, 6 Sup. Ct. 334, 374, 1191, 29 L. ed. 636.

Power of state to regulate charges of railroads, etc., can be bargained away, if at all, by words of positive grant only, or their equivalent. Stone v. Farmers' L. & T. Co., 116 U. S. 307, 6 Sup. Ct. 334, 374, 1191, 29 L. ed. 636.

As to extent of state control over railroads, see B. & O. R. Co. v. Maryland, 88 U. S. (20 Wall.) 456, 22 L. ed. 678, note.

Unjust discriminations on the part of railroads and other carriers may be regulated by the state legislature. Such corporations should not use their power to benefit particular individuals or build up particular localities by arbitrary discriminations in their favor, which must cause injury to other persons or places in rival business or occupying rival positions. Chicago & Alton R. Co. v. People ex rel. Koerner, 67 Ill. 11.

The state legislature has power to fix a maximum rate of charges by individuals or common carriers, warehousemen or other persons

done."[24] In order to authorize the exercise of this power, the nature of the contingency is immaterial, provided it be an equal and a fair one, a moral and a legal one, not opposed to sound policy, and so far connected with the object and purpose of the statute as not to be a mere idle and arbitrary one.[25]

The United States supreme court say: "It cannot be doubted that the making of rates for transportation by railroad companies, along public highways between points wholly within the limits of the state, is a subject primarily within the control of the state."[26] All means which are appropriate and which are plainly adaptable to the end authorized to be attained, and

or corporations exercising a calling or business public in its character or in which the public have an interest to be protected against extortion or oppression; and such regulation does not impair the obligation of the contract in the charters of the corporations regulated. Ruggles v. People, 91 Ill. 256.

All corporations are subject to legislative control under the exercise of the police power of the state. Ruggles v People, 91 Ill. 256.

[24] Stone v. Farmers' L. & T. Co., 116 U. S. 307, 6 Sup. Ct. 334, 29 L. ed. 636; State v. Johnson, 61 Kan. 803, 60 Pac. 1068, 49 L. R. A. 662; State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 476, 92 Pac. 606.

[25] State v. Parker, 26 Vt. 357.

An act of the legislature establishing a reasonable maximum rate of charge for transportation of passengers or property on railroads within the state is a valid and constitutional law. Chicago, B. & Q. R. Co. v. Jones, 149 Ill. 361, 37 N. E. 247.

By the Illinois constitutional provision (article II, sections 12 and 15) the legislature has the right to pass a law establishing or fixing reasonable maximum rates of charge, and when it passes such an act it does not exceed the powers granted to it. Chicago, B. & Q. R. Co. v. Jones, 149 Ill. 361, 37 N. E. 247.

Georgia Act of October 14, 1879, providing that fair or reasonable rates only shall be charged by railroads of the state does not violate the invested right of the railroad companies heretofore organized and operating in the state. Georgia R. Co. v. Railroad Commission, 70 Ga. 694.

[26] Smyth v. Ames, 169 U. S. 466, 18 Sup. Ct. 418, 42 L. ed. 819.

which are not prohibited, if they be consistent with the letter and spirit of the constitution, are constitutional. Where the law is not prohibited, and is really calculated to effect any of the objects intrusted to the government, for the courts to undertake to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department and to tread on legislative grounds.[27]

§ 46. —— Charter Rights of Corporations.—The provisions of the charter of a railroad or other corporation does not constitute a contract.[28] Such charter is taken and held subject to the power of the state to regulate and control the grant in the interest of the public,[29] and the state may repeal, alter, or amend the law under which the charter granted was governed and the franchise exercised; the charter right is not a contract-interest protected by the federal constitution prohibiting the impairment of contracts.[30] Therefore, the power granted to the board of directors of a railroad or other public corporation to make by-laws, rules and regulations for the management of its affairs, subject to, and in conformity with, the laws of the state, does not have the effect to exempt the company from the operation of laws subsequently enacted, when such laws are within the scope of legis-

[27] See McCullock v. Maryland, 17 U. S. (4 Wheat.) 316, 415, 421, 423, 4 L. ed. 579; Logan v. United States, 144 U. S. 263, 283, 293, 12 Sup. Ct. 622, 626, 36 L. ed. 429; Boske v. Comingore, 177 U. S. 459, 468, 20 Sup. Ct. 705, 44 L. ed. 847.

[28] Georgia R. Co. v. Railroad Commission, 70 Ga. 694; Missouri Pac. R. Co. v. Kansas, 216 U. S. 262, 30 Sup. Ct. 330, 54 L. ed. 472.

[29] State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 494, 92 Pac. 606; Louisville & N. R. Co. v. Kentucky, 183 U. S. 503, 22 Sup. Ct. 95, 46 L. ed. 292.

[30] Missouri Pac. R. Co. v. Kansas, 216 U. S. 262, 30 Sup. Ct. 330, 54 L. ed. 472.

See, also, notes, 26 L. ed. U. S. Rep. 961, 77 C. C. A. 281.

lative power, for the purpose of regulating the business in which such company is authorized to engage.[31]

Acts of incorporation granting exclusive privileges are to be strictly construed, and what is not expressly given therein, or necessarily implied therefrom, is withheld.[32] The act establishing a Railroad Commission, and empowering it to regulate and fix rates for the carriage of passengers and property, does not in any way impair the obligation of the contract in the charter of a railroad company.[33]

§ 47. Delegation of Power by Legislation—Generally.—While it is true that, except as to where authorized by the constitution, the legislature cannot delegate the legislative power,—cannot confer upon any body or person the power to determine what shall be the law,—because the legislature alone is empowered to determine what the law shall be;[34] yet an act

[31] Stone v. Farmers' L. & T. Co., 116 U. S. 307, 6 Sup. Ct. 334, 374, 1191, 29 L. ed. 636.

As to extent of state control over railroads, etc., see note, 29 L. ed. U. S. Rep. 636.

The granting to a railroad company the right, "from time to time, to fix, regulate and receive the toll and charges" to be received by it, merely confers the power to fix reasonable charges, leaving the state free, within the limits of its general authority, to declare what shall be deemed reasonable charges for the services rendered. State v. Farmers' L. & T. Co., 116 U. S. 307, 6 Sup. Ct. 334, 374, 1191, 29 L. ed. 636; Corporation Commission v. Atlantic Coast Line R. Co., 137 N. C. 1, 49 S. E. 191, 115 Am. St. Rep. 636, affirmed in Atlantic Coast Line R. Co. v. North Carolina Corporation Commission, 206 U. S. 1, 27 Sup. Ct. 585, 51 L. ed. 933.

[32] Georgia R. Co. v. Railroad Commission, 70 Ga. 694.

[33] Chicago, B. & Q. R. Co. v. Jones, 149 Ill. 361, 37 N. E. 247.

[34] State v. Young, 29 Minn. 474, 9 N. W. 373, affirmed and applied in State v. Chicago, M. & St. P. R. Co., 38 Minn. 281, 27 N. W. 782, and reversed on another point in Chicago, M. & St. P. R. Co. v. Munn, 134 U. S. 418, 10 Sup. Ct. 702, 33 L. ed. 970; but that portion of the decision relating to the question of what is and what is not a delegation of legislative power has never been questioned, and is still the law of the state of Minnesota. State v. Great Northern R. Co., 100 Minn. 445, 111 N. W. 289; Anderson v. Manchester Fire Assur. Co., 59 Minn.

creating a Board of Railroad Commissioners and empowering them to fix rates may properly be passed, because it does not constitute a delegation to such a board of legislative power.[35] The legislature, in the exercise of its power to regulate and control public corporations, such as railroads and other common carriers, may delegate to a Board of Railroad Commissioners certain functions which are administrative in their character, and which cannot well be performed by the legislature itself.[36]

§ 48. —— Want of Constitutional Provision.— The fact that the constitution of a state does not specifically provide for the creation of a Board of Railroad Commissioners does not make an act creating such a board invalid, the subjects upon which the legislature may enact laws not being enumerated in the constitution.[37] The constitution of the United

182, 60 N. W. 1095, 63 N. W. 241, 50 Am. St. Rep. 400, 28 L. R. A. 689; State v. Copeland, 66 Minn. 322, 69 N. W. 27, 61 Am. St. Rep. 410, 34 L. R. A. 777; State v. Wagoner, 77 Minn. 501, 80 N. W. 633, 1134, 77 Am. St. Rep. 680, 46 L. R. A. 442; Mague v. Board of County Commissioners, 84 Minn. 472, 88 N. W. 6.

[35] State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 92 Pac. 606.

See, also, *supra*, footnote 8, this chapter.

[36] State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 92 Pac. 606.

The liberty of contract guaranteed by the fifth amendment to the federal constitution is not impaired by the Interstate Commerce Act; and by parity of reasoning the right of contract of a railroad or other corporation, person or association will not be impaired by a state statute appointing a Railroad Commission or other body and empowering it to fix rates, etc. See Atlantic Coast Line R. Co. v. Riverside Mills, 219 U. S. 186, 31 Sup. Ct. 164, 55 L. ed. 167.

[37] State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 92 Pac. 606.

Specific provisions in the constitution are not essential to enable the legislature of the state to make all laws necessary and proper for carrying into execution the powers which the constitution fixes in the state government, or in any department or officer thereof. See Minneapolis,

States does not mention a federal Commission, but Congress, under the commerce clause in the federal constitution, has created one, the validity of which act has been repeatedly upheld by the federal courts.[38]

§ 49. —— Authority to Delegate as to Acts not Legislative.—While it is true that the legislature may not delegate those powers which are strictly legislative, it may delegate authority to perform certain functions which are administrative in character, and which cannot well be performed by the legislature.[39]

St. P. & Ste. Marie R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 915.

The creation of a Board of Railroad Commissioners is not void, even in those cases in which the constitution does not specifically provide for the creation of such a body. State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 92 Pac. 606.

[38] State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 92 Pac. 606.

[39] The following authorities, and many others that might be cited, sustain this doctrine: See Georgia R. Co. v. Smith et al., Railroad Commission, 70 Ga. 694; State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 480, 92 Pac. 606; State v. Chicago, M. & St. P. R. Co., 38 Minn. 281, 37 N. W. 782; State v. Freemont, E. & M. O. R. Co., 22 Neb. 313, 35 N. W. 118; Express Co. v. Wilmington & W. R. Co., 111 N. C. 463, 16 S. E. 393; Cincinnati, W. & Z. R. Co. v. Commissioners, 1 Ohio St. 77; Railroad Commission v. Atlantic Coast Line R. Co., 71 S. C. 130, 50 S. E. 641; Chicago, B. & Q. R. Co. v. Iowa, 94 U. S. 155, 24 L. ed. 94; Peik v. Chicago & N. W. R. Co., 94 U. S. 164, 24 L. ed. 97; Winona & St. P. R. Co. v. Blake, 94 U. S. 180, 24 L. ed. 99; Stone v. Wisconsin, 94 U. S. 181, 24 L. ed. 102; Chicago, M. & St. P. R. Co. v. Ackley, 94 U. S. 197, 24 L. ed. 99; Ruggles v. Illinois, 108 U. S. 526, 2 Sup. Ct. 382, 27 L. ed. 812; Illinois Cent. R. Co. v. Illinois, 108 U. S. 541, 2 Sup. Ct. 839, 27 L. ed. 818; Stone v. Farmers' L. & T. Co., 116 U. S. 307, 6 Sup. Ct. 334, 1191, 29 L. ed. 636; Stone v. Illinois Cent. R. Co., 116 U. S. 347, 6 Sup. Ct. 348, 1191, 29 L. ed. 650; Stone v. New Orleans & N. E. R. Co., 116 U. S. 352, 6 Sup. Ct. 349, 29 L. ed. 651; Dow v. Beidelman, 125 U. S. 680, 8 Sup. Ct. 1028, 31 L. ed. 841; Charlotte etc. R. Co. v. Gibbes, 142 U. S. 386, 12 Sup. Ct. 255, 35 L. ed. 1051; Chicago & G. T. R. Co. v. Wellman, 143 U. S. 339, 12 Sup. Ct. 400, 36 L. ed. 176; Pearsall v. Great Northern R. Co., 161 U. S. 646, 16 Sup. Ct. 705, 40 L. ed. 838; Minneapolis & St. L. R. Co. v. Minnesota, 186 U. S. 257, 22 Sup. Ct. 900, 46 L. ed. 1151; Minneapolis & St. L. R. Co. v. Minnesota, 193 U. S. 53, 24 Sup. Ct. 396,

It has been well said that "half the statutes on our books are in the alternative, depending upon the discretion of some person or board to whom is confided the duty of determining whether the proper occasion exists for executing them. But it cannot be said that the exercise of such discretion is the making of the law."[40] The true distinction is between the delegation of power to make the law, which necessarily involves a discretion as to what the law shall be, and conferring authority or discretion as to the execution of the law, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be raised.[41]

§ 50. —— Delegation as to Details and Enforcement.—The reasonableness of rates charged by common carriers depends upon circumstances, and as legislatures cannot be continually in session to consider and pass upon these circumstances, the requirements that the statute itself shall fix the charges might preclude the legislature from the use of the agencies necessary to perform the duties imposed upon it by the constitution. In other words, the legislature may authorize others to do things which it might properly be inconvenient or disadvantageous for it to do itself.[42] The extent of the authority of the legis-

48 L. ed. 612; Chicago, B. & Q. R. Co. v. Drainage Commission, 200 U. S. 561, 26 Sup. Ct. 341, 50 L. ed. 596; Atlantic Coast Line v. Florida, 203 U. S. 256, 27 Sup. Ct. 108, 51 L. ed. 174; Seaboard Air Line Co. v. Florida, 203 U. S. 261, 27 Sup. Ct. 109, 51 L. ed. 261; Atlantic Coast Line Co. v. North Carolina Corporate Commission, 204 U. S. 1, 27 Sup. Ct. 585, 51 L. ed. 933; Tilly v. Railroad Commissioners, 4 Woods, 427, 5 Fed. 641.

[40] Moers v. City of Reading, 21 Pa. 188, 202. See Locke's Appeals, 72 Pa. 491, 498, 13 Am. Rep. 716.

[41] Cincinnati, W. & Z. R. Co. v. Clinton, 1 Ohio St. 77, approved in Field v. Clark, 143 U. S. 649, 12 Sup. Ct. 495, 36 L. ed. 294.

[42] See Union Bridge Co. v. United States, 204 U. S. 364, 27 Sup. Ct. 367, 51 L. ed. 523.

lature to delegate its power to a Railroad Commission is limited only by the constitutional guaranties prohibiting the destruction of property rights vested in the owners of railroads and other common carriers.[43]

While the legislature possesses all the legislative powers of the state, and while it is true that they cannot delegate any portion of that legislative power to any other body, tribunal or person, yet it is generally found impracticable for the legislature to exercise this power in detail. The legislature may do so if they choose, or they may enact a general provision and leave those who are to act under such general provision to use their discretion in filling up the details. They mark out the great outlines, and leave those who are to act within those outlines to use their own discretion in carrying out the minor regulations.[44]

[43] Chicago, M. & St. P. R. Co. v. Minnesota, 134 U. S. 418, 10 Sup. Ct. 462, 33 L. ed. 970; State v. Johnson, 61 Kan. 803, 60 Pac. 1068, 49 L. R. A. 662; State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 476, 92 Pac. 606.

[44] Coleman v. Newby, 7 Kan. 82, 88. See Chicago & N. W. R. Co. v. Dey, 35 Fed. 866, 1 L. R. A. 744.

Because of the multitude of details, the intricacy of the subject, the expert knowledge required, the numerous separate investigations of interrelated questions of fact which are necessary, and the necessity for frequent change and adjustment in rates or services, a legislative body, the members of which are chosen for each term from the body of the people, find it an actual, rather than a legal, impossibility to fix just and reasonable rates. It is manifest that to hold that by the adoption of its constitution, fixing the whole legislative power in the Senate and Assembly and forbidding its delegation, the state would be shorn of some of its usual and necessary power of sovereignty and become impotent to exercise the power of regulation. Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 915.

Railroad rates regulated by direct action of the legislature are impracticable. The business of the carrier has so grown and expanded and become such a large factor in the conflicting social and economic life of the country, that the old method of regulation by direct act of the legislative body is no longer adequate and, indeed, no longer possible. But the old authority and the old principles of the right of regulation by the state remain, and are not to be abrogated by implication.

That is to say, general rules of law may be made by the legislature to take effect and be put in force upon the subsequent establishment of certain facts or conditions; and the nature of the contingency on which the law is to go into effect is immaterial, where such contingency is fairly connected with the object and purpose of the act, and is reasonably certain.[45]

An efficient system of just and reasonable regulation of railroad rates and services, etc., by direct action of the legislature specifying rates of delivery and service, is impossible, under our system of government.[46] Reasonableness and certainty of railroad

Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 915.

The limitation and implied prohibition in the constitution must not be extended so far as to destroy the necessary power of the state or prevent its efficient exercise. See Union Pac. R. Co. v. Peniston, 85 U. S. (18 Wall.) 5, 31, 21 L. ed. 787.

The constitution of the United States gives Congress power to make all laws necessary and proper for carrying into execution the power by that instrument invested in the government of the United States or in any department or officer thereof. But the legislatures of the various states need no such enabling provision; they possess that power. Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 915.

[45] See Minneapolis, St. P. & Ste. Marie R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 915.

Process of enacting laws frequently involves preliminary determination of a fact or group of facts by the legislature, and it is well settled that the legislature may declare the general rule and law to be in force and take effect upon the subsequent establishing of the fact necessary to make it operative or to call for its application. Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission, 136 Wis. 146, 162, 116 N. W. 915; see Hanover Nat. Bank v. Moyses, 186 U. S. 181, 22 Sup. Ct. 857, 46 L. ed. 1113; Phoenix Ins. Co. v. Welch, 29 Kan. 672; Adams v. Beloit, 105 Wis. 363, 81 N. W. 896, 47 L. R. A. 441; In re Griner, 16 Wis. 423; Field v. Clark, 143 U. S. 649, 12 Sup. Ct. 495, 36 L. ed. 294; In re North Milwaukee, 93 Wis. 616, 67 N. W. 1033, 33 L. R. A. 638; Nash v. Fries, 129 Wis. 120, 108 N. W. 210; State ex rel. Adams v. Burdge, 95 Wis. 390, 70 N. W. 347, 60 Am. St. Rep. 123, 37 L. R. A. 157; State ex rel. Faber v. Hinkel, 131 Wis. 103, 111 N. W. 217; State v. Parker, 26 Vt. 357.

[46] See Minneapolis, St. P. & Ste. Marie R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 915.

rates being required by a statute creating a Commission with power to investigate existing rates and services and to fix and determine what rates and what services are reasonable, and providing that the rates of service so fixed by such Commission shall be in force, is a valid exercise of legislative power.[47] This power of the legislature to regulate the operation of railroads and other public utilities by a Commission

[47] See Minneapolis, St. P. & Ste. Marie R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 915.

Delegation of any power not legislative in its character which it may rightfully exercise may be made by the legislature. Wayman v. Southard, 23 U. S. (10 Wheat.) 1, 6 L. ed. 253.

The legislature, in the exercise of its power to regulate and control public corporations, may delegate to a Board of Railroad Commissioners or other body or officers certain functions administrative in their character and which cannot well be performed by the legislature itself. State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 92 Pac. 606.

Legislature may, instead of making the law wholly conditional and contingent upon the ascertainment and declaration of reasonable rates by the Commission, add the further contingency that the investigation and order of the Commission be subject to the review of the courts, and the rate so fixed by the Commission upheld as not unreasonable by judicial determination. Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission, 136 Wis. 146, 163, 116 N. W. 905.

Legislature may delegate the power to determine preliminarily a fact or group of facts essential to enable the legislature to enact laws and prescribe rules for the regulation and control of specific matters. See Minneapolis, St. P. & Ste. Marie R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 915.

Statutes declaring that railroad rates and services shall be reasonable, and creating a Commission with power to investigate existing rates of service, and to fix and determine what rates and what services are reasonable, and providing that the rates and services so fixed by such Commission shall be in force, have been generally upheld as a valid exercise of the legislative power. See Railroad Commission Cases, 116 U. S. 307, 6 Sup. Ct. 334, 1191, 29 L. ed. 636; Reagan v. Farmers' L. & T. Co., 154 U. S. 362, 14 Sup. Ct. 1047, 38 L. ed. 1014; Georgia R. Co. v. Smith, 70 Ga. 694; Chicago, B. & Q. R. Co. v. Jones, 149 Ill. 361, 37 N. E. 247, 41 Am. St. Rep. 278, 24 L. R. A. 141; Hooper v. Chicago, M. & St. P. R. Co., 91 Iowa, 639, 60 N. W. 487; State ex rel. Railroad & Warehouse Commission v. M. & St. L. R. Co., 80 Minn. 190, 83 N. W. 60; Railroad Commission v. Houston & R. C. R. Co., 90 Tex. 340, 38 S. W. 750.

rests upon the principle that the state has control of property of a public nature,[48] and is not in violation of the constitutional requirement that the legislative, executive and judicial departments of government shall be kept separate.[49]

§ 51. —— Discretionary Powers cannot be Delegated.—Discretion to determine whether precedent laws shall or shall not go into effect in particular cases cannot be delegated by the legislature to a Railroad Commission, other body, or to the courts.[50] In other words, the Commission cannot be invested with discretion to determine whether precedent law declared by the legislature shall or shall not go into effect in particular cases.[51] The only power that can be delegated is that of determining whether the law is applicable in particular cases.

§ 52. —— Quasi-judicial Tribunal.—That is to say, a quasi-judicial tribunal may be created by the legislature, and there may be delegated to it the power which the legislature possesses to ascertain, determine, and declare facts, where such determination precedes or follows the enactment of a general rule of law.[52] Where the power of the legislature to regulate cannot otherwise be justly and efficiently exercised, the legislature may declare a general rule of law applicable to conditions of fact described by such

[48] Caughman v. Columbus N. & H. R. Co., 82 S. C. 418, 64 S. E. 240; Gulf etc. R. Co. v. State (Tex. App.), 120 S. W. 1028.

[49] See discussion in authorities in § 64, this chapter.

[50] See Minneapolis, St. P. & Ste. Marie R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 915.

[51] Minneapolis, St. P. & Ste. Marie R. Co. v. Railroad Commission, 136 Wis. 146, 163, 116 N. W. 915. See In re North Milwaukee, 93 Wis. 616, 67 N. W. 133, 33 L. R. A. 638; Dowling v. Lancashire Ins. Co., 92 Wis. 63, 65 N. W. 738, 31 L. R. A. 112.

[52] See Minneapolis, St. P. & Ste. Marie R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 915.

law in general terms but not precisely ascertained, which law is to take effect upon all specific cases within the general rule therein written down when there exists such a condition of fact as brings the case within the rule as ascertained and established by subsequent determination of a judicial or a quasi-judicial tribunal established by the legislature for that purpose.[53]

§ 53. Commission Acts—Alabama.—The Alabama Act empowering the state Railroad Commission to fix and change rates came before the circuit court of appeals of the United States in 1909 on the question of its validity, it being alleged to be contrary to the provisions of the Alabama constitution separating the functions of government, and Mr. Justice Selby, in sustaining the validity of the act, among other things, says: "It is true that the functions of fixing rates is legislative in its nature, yet it seems well settled now that the creation of a Commission, with power to fix rates, is not an unconstitutional delegation of legislative power." [54]

§ 54. —— Illinois.—The Illinois Railroad and Warehouse Commission Act of 1871, conferring upon that Commission power to fix freight and passenger rates, was the first Commission of the kind with such powers, and furnishes the precedent and the policy for similar acts in other states. The litigation following the establishment of the Illinois Commission fully

[53] See Minneapolis, St. P. & Ste. Marie R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 915.

[54] Railroad Commission of Alabama v. Central Ga. R. Co., 170 Fed. 225, 238, distinguishing as not applicable; Mitchell v. State ex rel. Florence Dispensary, 134 Ala. 392, 32 So. 687, and approving; Ward v. State ex rel. Parker, 154 Ala. 227, 45 So. 655; Tallassee Falls Mfg. Co. v. Commissioner's Court, 158 Ala. 363, 48 So. 354, and relying on Saratoga Springs v. Saratoga Gas, Elect. Light & Power Co., 191 N. Y. 123, 83 N. E. 693.

demonstrates the public character of railway business.[55] The Illinois Act of 1873, relating to a similar Commission, has been held not to be invalid because, instead of establishing reasonable and maximum rates of charge, it delegated the power to establish such rates to the Commission.[56]

§ 55. —— **Iowa.**—The Iowa Railroad Commission Act, which empowers the Commission to make sched-

[55] See Chicago & A. R. Co. v. People ex rel. Koener, 67 Ill. 11 (holding railroad corporations subject to legislative control); Ruggels v. People, 91 Ill. 256 (holding charters are contracts protected by the federal constitution but subject to regulation under the police power of the state); Cent. R. Co. v. People, 95 Ill. 313 (holding constitutional the act regulating railroads and preventing extortion and unjust discriminations, holding the charter by which the corporation acquires its power and functions to transact its business in the mode prescribed is beyond doubt a contract; but that, by necessary implication, it is subject, the same as in the case of a person, to the legislative power of the state to define, prohibit and punish extortion); Munn v. People, 94 U. S. (4 Otto) 113, 24 L. ed. 77 (holding the legislature can fix by law maximum charges for storing of grain in warehouse; that the regulation of public warehouses is not unconstitutional; that private property devoted to a public use is subject to public regulation; and that a mere common-law regulation of trade or business may be changed by statute).

[56] Chicago, B. & Q. R. Co. v. Jones, 149 Ill. 361, 37 N. E. 247, 41 Am. St. Rep. 278, 24 L. R. A. 141.

Illinois statute of May 2, 1873, provides for the making by Railroads and Warehouse Commission a schedule of reasonable maximum rates for each of the railroad corporations of the state, furnishing a uniform rule for the guidance of railroad companies. Chicago, B. & Q. R. Co. v. People, 77 Ill. 443; Chicago, B. & Q. R. Co. v. Jones, 149 Ill. 361, 375, 37 N. E. 247.

Section 8, authorizing Railroad and Warehouse Commissions to fix for each of the railroads in the state a schedule of reasonable maximum rates, is not unconstitutional, as being an attempted delegation of legislative powers. Chicago, B. & Q. R. Co. v. Jones, 149 Ill. 361, 37 N. E. 247.

The Illinois Act of 1873, to prevent extortion and unjust discrimination in rates and charges for the transportation of passengers and freight on railroads within the state, and making the schedule of the Railroad Commission *prima facie* evidence that the rates therein fixed are reasonable maximum rates of charges, is not unconstitutional on the ground that it deprives the carriers of their property without due process of law or as infringing upon the rights of trial by jury. Chicago, B. & Q. R. Co. v. Jones, 149 Ill. 361, 37 N. E. 247.

ules of reasonable and maximum rates, and annexes a penalty for disobedience on the part of railroad companies in the charging and collection of tolls and compensation which are unreasonable and unjust, came up for consideration in 1888. The validity of this act was attacked on constitutional grounds, because it seemed a delegation of legislative power. Mr. Justice Brewer presiding, speaking of the power to fix rates in the manner pursued by the Iowa legislature, said: "There is no inherent vice in such a delegation of power; nothing in the nature of things which would prevent the state, by constitutional enactment at least, from intrusting these powers to such a board; and nothing in such constitutional action which would invade any rights guaranteed by the federal constitution. So that, after all, the question is one more of form than of substance. The vital question with both shipper and carrier is that the rates shall be just and reasonable, and not by what body they shall be put in force. While . . . . it must be conceded that the power to fix rates is legislative, yet the line of demarcation between legislative and administrative functions is not always easily discerned. The one runs into the other. The law books are full of statutes, unquestionably valid, in which the legislature has been content to simply establish rules and principles, leaving execution and details to other officers. . . . . While, of course, the argument from inconvenience cannot be pushed too far, yet it is certainly a matter of inquiry whether in the increasing complexity of our civilization, our social and business relations, the power of the legislature to give increased extent to administrative functions must not be recognized. . . . . Finally, whatever direct authority upon the question exists sustains this delegation of power." [57]

[57] Chicago & N. W. R. Co. v. Dey, 35 Fed. 866, 1 L. R. A. 744. Citing Stone v. Farmers' Loan & T. Co., 116 U. S. 307, 6 Sup. Ct. 334,

§ 56. —— **Kansas.**—The constitution of Kansas vests all legislative power in a legislature consisting of a Senate and House of Representatives, and the legislature is not authorized to delegate such legislative power; yet it may confer upon any person, board or Commission the power of determining what the law shall be.[58] The act creating the Board of Railroad Commissioners applies solely to the business of railroads within the state of Kansas, and is not designed to affect, and does not apply to or regulate or affect, interstate commerce,[59] and is not unconstitutional upon the ground that it provides for the taking of the property of persons or corporations without due process of law.[60]

§ 57. —— **Minnesota.**—The Minnesota Railroad and Warehouse Commission Act of March 7, 1887,[61]

1191, 29 L. ed. 636; Munn v. Illinois, 94 U. S. 113, 24 L. ed. 77; Chicago, B. & Q. R. Co. v. Iowa, 94 U. S. 155, sub nom. Chicago, B. & Q. R. Co. v. Cutts, 24 L. ed. 94; Peik v. Chicago & N. W. R. Co., 94 U. S. 164, 24 L. ed. 97.

[58] State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 92 Pac. 606.

Kansas constitution contemplates the complete separation of the three governmental powers as clearly as though it so declared in express terms. In re Sims, 54 Kan. 1, 37 Pac. 135, 45 Am. St. Rep. 261, 25 L. R. A. 110; State v. Johnson, 61 Kan. 803, 60 Pac. 1068, 49 L. R. A. 662; In re Davis, 54 Kan. 368, 49 Pac. 160; State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 474, 92 Pac. 606.

[59] State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 92 Pac. 606.

[60] State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 92 Pac. 606.

Kansas Act creating Board of Railroad Commission (Laws 1901, c. 286; Gen. Stats. 1901, c. 84, art. 3), and acts supplementary and amendatory thereto (Laws 1903, c. 391; Laws 1905, c. 340), do not violate the constitutional requirements that the legislative, executive and judicial departments of government shall be kept separate. State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 92 Pac. 606 (pending in supreme court of United States on writ of error allowed November 18, 1907).

[61] Minn. Gen. Laws 1880, c. 10.

was held to be in derogation of the right to a judicial investigation by due process of law, and for that reason unconstitutional. In discussing the act the supreme court of the United States say: "The expressed intention of the legislature is that the rates recommended and published by the Commission (assuming that they have proceeded in the manner pointed out by the act) should be not simply advisory, nor merely *prima facie* equal and reasonable, but final and conclusive as to what are lawful or equal and reasonable charges; and in proceedings to compel compliance with the rates thus published, the law neither contemplates nor allows any issue to be made, or inquiry had, as to their equality and reasonableness in fact. Under the provision of the act, the rates thus published are the only ones that are lawful, and therefore, in contemplation of the law, the only ones that are equal and reasonable; and, hence, in proceedings affecting such rates, there is no fact to traverse, except the violation of the law in refusing compliance with the recommendations of the Commission," holding this statute unconstitutional.[62] The present Minnesota Railroad Commission Act[63] authorizing that Commission by order to fix joint through rates for the transportation of freight over two or more connecting lines of railroad within the state, and to compel obedience thereto, has been held not to be in violation of any constitutional provision, federal or state.[64]

§ 58. —— **Mississippi.**—In Mississippi the Railroad Commission Act intrusts the Commission with

[62] Chicago, M. & St. P. R. Co. v. Minnesota, 134 U. S. 418, 10 Sup. Ct. 462, 32 L. ed. 970.

[63] Minn. Laws, 1895, c. 91.

[64] State ex rel. Railroad & Warehouse Commission v. Minneapolis & St. L. R. Co., 80 Minn. 191, 83 N. W. 60.

supervision over traffic charges, with authority to continue such charge from time to time, and to increase or reduce any of said rates according as experience and business operation may justify, and to fix tariffs of charges for those railroads failing to furnish schedules as required. This act was attacked in the supreme court of the state, in which it was contended that the statute is repugnant to the constitution of the state because it creates a commission and charges that commission with the duty of supervising railroads. The act was upheld by the state court, and this view of the state court was concurred in by the supreme court of the United States, in a case involving the same controversy, and being one of those cases known as the "Railroad Commission Cases."[65]

§ 59. —— **North Carolina.**—In North Carolina a Railroad Commission Act was passed intrusting a Commission with power to examine and fix rates, etc., and enforce the same. The Commission made an order, the enforcement of which was directed by the state court, regulating the train service of the Atlantic Coast Line Railroad with connecting carriers, and the case was carried to the supreme court of the United States in 1906, on the ground that it was an arbitrary and unreasonable order, as being beyond the scope and authority delegated to the Commission by the state laws; and also on the ground that it invaded

[65] See Stone v. Farmers' Loan & Trust Co., 116 U. S. 307, 6 Sup. Ct. 334, 1191, 29 L. ed. 636; Oregon R. & Nav. Co. v. Campbell, 173 Fed. 957.

The Mississippi constitution, like the constitution of Oregon and other states of the Union, created three departments of government, consisting of the legislative, the executive and the judicial, and contains no special authorization for the establishment of the Railroad Commission with special powers. The federal case above cited would seem, therefore, to be strong authority for the validity of the Oregon Act, although there is but little discussion of the principle involved. Oregon R. & Nav. Co. v. Campbell, 173 Fed. 957.

the rights of property, and was an infringement of the Fourteenth Amendment to the federal constitution. In discussing questions involved, Mr. Justice White said: "The elementary proposition that railroads, from the public nature of the business by them carried on and the interest which the public have in their operation, are subject, as to their state business, to state regulation, which may be exerted either directly by the legislative authority, or by administrative bodies endowed with power to that end, and is not and could not be successfully questioned in view of the long line of authorities sustaining that doctrine."[66]

§ 60. —— Oklahoma.—The Oklahoma Corporation Commission Act does not extend the authority of

[66] Atlantic Coast Line R. Co. v. North Carolina Corporation Commission, 206 U. S. 1, 27 Sup. Ct. 585, 51 L. ed. 938, citing Chicago, B. & Q. R. Co. v. Iowa, 94 U. S. 155, sub nom. Chicago, B. & Q. R. Co. v. Cutts, 24 L. ed. 94; Peik v. Chicago & N. W. R. Co., 94 U. S. 164, 24 L. ed. 97; Chicago, M. & St. P. R. Co. v. Ackley, 94 U. S. 179, 24 L. ed. 99; Winona & St. P. R. Co. v. Blake, 94 U. S. 181, 24 L. ed. 102; Ruggles v. Illinois, 108 U. S. 536, 2 Sup. Ct. 832, 27 L. ed. 816; Illinois C. R. Co. v. Illinois, 108 U. S. 541, 2 Sup. Ct. 839, 27 L. ed. 818; Stone v. Farmers' Loan & T. Co., 116 U. S. 307, 6 Sup. Ct. 334, 388, 1191, 29 L. ed. 636; Stone v. Illinois C. R. Co., 116 U. S. 347, 6 Sup. Ct. 348, 29 L. ed. 650; Stone v. New Orleans & N. E. R. Co., 116 U. S. 352, 6 Sup. Ct. 349, 391, 29 L. ed. 651; Dow v. Beidelman, 125 U. S. 680, 31 L. ed. 841, 1 Inters. Com. Rep. 56, 8 Sup. Ct. 1028; Charlotte, C. & A. R. Co. v. Gibbes, 142 U. S. 386, 12 Sup. Ct. 255, 35 L. ed. 1051; Chicago & G. T. R. Co. v. Wellman, 143 U. S. 339, 12 Sup. Ct. 400, 36 L. ed. 176; Pearsall v. Great Northern R. Co., 161 U. S. 646, 665, 16 Sup. Ct. 705, 40 L. ed. 838, 844; Louisville & N. R. Co. v. Kentucky, 161 U. S. 677, 695, 16 Sup. Ct. 714, 40 L. ed. 849, 857; Wisconsin, M. & P. R. Co. v. Jacobson, 179 U. S. 287, 21 Sup. Ct. 115, 45 L. ed. 194; Minneapolis & St. L. R. Co. v. Minnesota, 186 U. S. 257, 22 Sup. Ct. 900, 46 L. ed. 1151; Minneapolis & St. L. R. Co. v. Minnesota, 193 U. S. 53, 24 Sup. Ct. 396, 48 L. ed. 614; Chicago, B. & Q. R. Co. v. Illinois, 200 U. S. 561, 26 Sup. Ct. 341, 50 L. ed. 596, 605; Atlantic Coast Line R. Co. v. Florida, 203 U. S. 256, 27 Sup. Ct. 108, 51 L. ed. 174; Seaboard Air Line R. Co. v. Florida, 203 U. S. 261, 27 Sup. Ct. 109, 51 L. ed. 175.

the Commission beyond the matters and bounds fixed by article IX, section 18, of the state constitution, nor alter, amend, revise, or repeal any section of the constitution from sections 18 to 34, inclusive, but is merely supplementary to section 18, and provides a remedy for the enforcement and protection of certain rights thereby secured, and by legislative construction defines those rights so that their exact limits may be known.[67]

§ 61. —— Oregon.—The Oregon Railroad Commission Act,[68] providing for filling the offices by election in joint session, has been held not to be violative of the provisions of the state constitution.[69] The pur-

[67] Missouri, O. & G. R. Co. v. State (Okl.), 119 Pac. 117.

"Public facilities" or "public conveniences," as used in article IX, section 18, of the Oklahoma Constitution, construed to include union passenger depots. Examine "Constitutional Law," Cent. Dig., §§ 14, 15; Dec. Dig., § 20; also, 6 Words and Phrases, 5780; 2 Words and Phrases, 1556–1558; 3 Words and Phrases, 2637.

[68] Or. Laws, 1907, c. 53.

[69] Briggs v. McBride, 17 Or. 648, 21 Pac. 878; Eddy v. Kincaid, 28 Or. 557, 41 Pac. 157; State v. Compson, 34 Or. 27, 54 Pac. 349.

Oregon Railroad Commission Act (Laws 1907, c. 52) was closely modeled upon the Wisconsin Railroad Commission Act (Wisconsin Laws 1905, c. 362), as amended by Laws of 1905, Special Session, cc. 13, 17, and is similar in many of its general provisions and in much of its language to the Railroad Commission Act of Ohio and Nevada. The Federal Act regulating commerce with its amendment and supplementary acts is also closely followed by this statute. Some of the sections are modeled upon the Iowa, Minnesota and Texas statutes.

The Interstate Commerce Act above referred to is that of February 14, 1887 (24 Stats. at Large, 379, 1 Supp. Rev. Stats. U. S. 529), as amended by acts of March 2, 1889 (25 Stats. at Large, 855, 1 Supp. Rev. Stats. U. S. 684), and by act of February 14, 1891 (26 Stats. at Large, 743, 1 Supp. Rev. Stats. U. S. 891), and by act of February 8, 1895 (28 Stats. at Large, 643, 2 Supp. Rev. Stats. U. S. 369), and by act of June 29, 1906 (34 Stats. at Large, 584).

The Oregon Act (Laws 1907, p. 75, § 23) is not inimical either to the fundamental law of the state or to the commerce laws of the federal constitution. Oregon R. & Nav. Co. v. Campbell, 173 Fed. 957.

Section 27 of the Oregon Act, establishing an Interstate Commerce Commission (Stats. 1907, p. 75), being void because in conflict with

pose of the Oregon Act, as indicated by sections 11, 18 and 20, on the part of the legislature, was to limit the scope of the exercise of the Commission's power as to commerce within the state; and it is manifest the legislature did not intend to regulate interstate traffic, in violation of the commerce clause of the federal con-

the commerce clause of the federal constitution, does not render the entire act void, as the remainder of the act may stand as valid and operative without the provisions of that section. So. Pac. Co. v. Campbell, 189 Fed. 696.

Federal Constitution, Amendment 14, section 1, is not violated by the Oregon Railroad Commission Act. Oregon R. & Nav. Co. v. Campbell, 173 Fed. 957; Portland, R. L. & P. Co. v. Railroad Commission, 56 Or. 469, 105 Pac. 709, 109 Pac. 273.

Federal Constitution, article I, section 8, is not invaded by the Railroad Commission Act of Oregon. Oregon R. & Nav. Co. v. Campbell, 173 Fed. 957.

The power of the Oregon Railroad Commission to fix rates under statute of February 18, 1907 (Laws 1907, p. 67), was attacked by bill for preliminary injunction preventing the putting in force of rates fixed by the Commission. The allegations of the bill were to the effect that the Railroad Commission Act of Oregon and the order of the Commission, made in pursuance thereof, fixing the rates complained of, were an invasion of the exclusive right of Congress to regulate interstate commerce, and also on the ground that the rates so fixed and established were unreasonable and unjust, and that the complainant was practically inhibited from having the question as to whether the rates were in fact unreasonable and unjust adjudicated in a tribunal of justice by reason of the supposed drastic penalty imposed for an attempt to obtain such an adjudication. This was held to present a federal question, and gave the circuit court jurisdiction, whether the complainant's positions were maintainable in fact or not; because the federal questions remain, and afford a basis for interposition by the federal courts. Oregon R. & Nav. Co. v. Campbell, 173 Fed. 957, 966.

In this case three federal and two state questions were presented under the federal and state constitutions in which the validity of the order of the Railroad Commission was attacked.

I. Federal Question.—First: That the order, if effective, regulates interstate commerce.

Second: That by reason of the exorbitant and drastic penalties imposed by the act for the violation of any order adopted by the Railroad Commission, such act in practical effect deprives the complainant

stitution."[79] Under the act the Commission is charged with many duties that are not executive, but purely administrative or ministerial. It must inquire into the management of the business of railroads, and shall keep itself informed as to the manner and method in which the same is conducted (section 39 of the act); it shall require annual reports (section 40); it may require a uniform system of accounting (section 43); it may require a list of passes to be furnished (section 45), and it shall make report to the governor annually, and recommend such legislation as may be deemed important (section 46). All these things would seem to be merely administrative. Others would seem to be more nearly executive, as, for instance, the Commission is empowered to make complaint before the Interstate Commerce Commission, with a view to rectifying excessive or discriminatory rates and charges (section 47). And it shall inquire into any neglect or violation of the laws of the state by any railroad corporation doing business therein. It is also made its duty to enforce the provisions of the act as well as all other laws relating to railroads (section 57). But the Commission is no exception to the creation of administrative officers and Boards of Com-

of the equal protection of the law, and subjecting property to be taken without due process of law.

Third: That the other effect of the order, if operative, would be to prevent the complainant from making fair net earnings, and would thus deprive the complainant of its property without due process of law.

II. State Questions.—First: Whether the rates established by the order of the Commission were reasonable.

Second: Whether the Oregon legislative assembly by such act confers upon the Railroad Commission legislative, executive and judicial functions, in violation of the provisions of the state constitution.

The courts say: "If any of these questions be answered in the affirmative, the work of the Railroad Commission must fail in its purpose." And in an exhaustive and well-reasoned opinion, answer them all in the negative. Oregon R. & Nav. Co. v. Campbell, 173 Fed. 957.

[79] Oregon R. & Nav. Co. v. Campbell, 173 Fed. 980.

mission, charged with like and kindred duties. The legislature has created a Board of Railroad Commissioners, a Board of Fish Commissioners, a Board of Agriculture and Insurance Commissioners (the Secretary of State being made ex-officio of such Commission), a Food and Dairy Commission, and a Commissioner of the Bureau of Labor Statistics and Inspector of Factory and Workshops. It is especially made the duty of this latter officer to cause to be enforced all the laws regulating the employment of children, minors and women,—a function executive in its character, for the executive department is charged with the duty to see that the laws are faithfully executed. But all these boards and officers, in the general scope of their powers, are charged with administrative rather than executive duties. Such is the character of the Railroad Commission Act, so that the situation comes to this: The legislature has delegated to the Commission the duty of fixing rates, which it does not add to legislative action, but as an auxiliary to the exercise of legislative functions, which the authorities all sanction as falling within the legislative power. There can be no valid objection to conferring such authority upon an administrative board. The board thereafter administers the law as devised. Certainly such a regulation does not clothe an officer or officers in one department with official duties pertaining to those of another department. Nor does it commingle the appropriate functions of the several departments of government.[71]

§ 62. —— Texas.—The Texas Railroad Commission Act empowers the Commission to classify and fix rates of compensation for carriage of freight, upon giving appropriate notice to the railroad company affected; it being further provided that, when a rail-

[71] Oregon R. & Nav. Co. v. Campbell, 173 Fed. 957, 970.

road company or party in interest is dissatisfied with the decision of any rate or classification, such railroad company, etc., may file a petition in a court of competent jurisdiction against such Commission as defendant, and that the reasonableness of the rate, or charge, or classification, may there be determined; and in this the provision is very similar to the Oregon Act. Stringent penalties are provided for failure on the part of the railroad company affected to comply with the order and direction of the Commission.

The act was first called in question because of the drastic penalties imposed for violation of any of its provisions, and it was decided that the clauses providing punishment might be stricken out and the act stand as a valid law for the regulation of the rates of traffic. In passing upon the constitutionality of the act, Mr. Justice Brewer, then upon the bench of the supreme court of the United States, who wrote the opinion, says: "There can be no doubt of the general power of a state to regulate the fares and freight which may be charged and received by railroad or other carriers, and that this regulation can be carried on by means of a Commission. Such a Commission is merely an administrative board created by the state, and carrying into effect the will of the state as expressed by its legislature.[72] No valid objection, therefore, can be made on account of the general features of this act—those by which the state has created the Railroad Commission and intrusted it with the duty of prescribing rates and fares and freight, as well as other regulations for the management of the railroad of the state."[73]

[72] Railroad Commission Cases, 116 U. S. 307, 6 Sup. Ct. 334, 338, 1191, 29 L. ed. 636.

[73] Reagan v. Farmers' L. & T. Co., 154 U. S. 362, 14 Sup. Ct. 1047, 38 L. ed. 1014.

The Texas constitutional provision as to the distribution of powers is as follows: "The powers of the government of the state of Texas

§ 63. —— Wisconsin.—The Wisconsin Act of December 23, 1911, which assumes and declares the ascertaining of a railroad rate, charge, classification, or service which is exact, reasonable and just, and applicable to every special instance or condition, and discovered by investigation, and commits the duty of such investigation to the Railroad Commission to ascertain and disclose that rate, classification, or service, and provides that when so ascertained and disclosed, the mandate of the statute that rates, fares, charges, classifications, and joint rates fixed by the Commission shall be in force and *prima facie* reasonable, is a valid exercise of the constitutional powers of the legislature inasmuch as the same declares general rules of law to take effect in the particular instance investigated by the Commission, contingent upon the ascertainment and promulgation by the Commission of what is reasonable in the particular instance or under the peculiar conditions designated.[74]

§ 64. Distribution of Powers of Government.—It is highly important that there be a separation in the government of the state of the legislative, judicial and executive functions, and that the officers of one department shall not exercise the functions conferred

shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are legislative, to one, those which are executive to another, and those which are judicial to another; and no person or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted."

No special provision is otherwise made in the constitution for the creation of a Railroad Commission.

[74] See Minneapolis, St. P. & Ste. Marie R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 915.

Wisconsin Statutes of 1898, section 1770b, regulating foreign corporations, is not beyond the power of the state when applied to towage contracts between Wisconsin points. Independent Tug Line v. Lake Superior Lumber & Box Co. (Wis.), 131 N. W. 408.

upon another; under our system of government, however, the absolute independence of the departments of state, and the complete separation of the powers is impracticable, and was not intended.[75] The division

[75] In re Sims, 54 Kan. 1, 11, 37 Pac. 135, 45 Am. St. Rep. 261, 25 L. R. A. 110.

The constitution of the United States has effectively segregated such powers of government, without any express declarations to that effect. That instrument provides (article I, section 1), that "all legislative powers herein granted shall be vested in a Congress of the United States"; it also provides (article II, section 1) that "executive powers shall be vested in a President of the United States"; and that (article III, section 1) "the judicial powers of the United States shall be vested in one supreme court, and such inferior courts as the Congress may from time to time ordain and establish." Thus it is that, while the powers of government under the national constitution are actually apportioned to or divided into three departments, there is no express declaration that they shall be so apportioned or divided. The thing is done by establishing, severally, each of the departments as if the constitution had in so many words so declared. In legal effect, therefore, there is no difference between the division of governmental functions under the federal constitution as compared with the state constitutions in which it is specifically ordained that the powers shall be divided into the three departments, save as to such constitutions in which the administrative powers are included with the executive in the state government.

The principle of the segregation of the three functions of government was in a concept incident to Revolutionary times, leading to the adoption of the federal constitution, but was a maxim having its outgrowth from the British constitution, the meaning of which is that "where the whole power of one department is exercised by the same hands which possess the whole power of another department, the fundamental principles of a free constitution are subverted." The Federalist, p. 375.

Montesquieu says: "There can be no liberty, where the legislative and executive powers are united in the same person or body of magistrates . . . . or if the power of charging be not separate from the legislative and executive powers." Spirit of Laws, bk. XI, 6.

Under the British constitution there is also a separation of these distinctive departments of government, but there remains a blending, more or less, of the powers. Thus the executive retains the prerogative of making treaties, which, under certain limitations, have the force of legislative acts; members of the judiciary are appointed by the executive; one branch of the legislative acts as constitutional advisers to the executive, and at the same time has the sole power in cases of impeachment, and not invested with the supreme appellate jurisdiction in all other cases; and the judiciary department is so far connected with

of governmental powers into the three departments above enumerated, while of the greatest importance in the creation and organization of a state, and from the viewpoint of constitutional law or otherwise,[76] is not an exact classification, because no such delimitation of governmental powers is possible.[77]

Under constitutional divisions of the powers of the state into the three departments of legislative, execu-

the legislative department as to participate in its deliberation although not entitled to vote on the passage of laws.

Mr. Justice Story says: "When we speak of the separation of the three great powers of government, and maintain that the separation is indispensable to public liberty, we are to understand this maxim in a limited sense. It is not meant to affirm that they must be kept wholly and entirely separate and distinct and have no common link of connection or dependence, the one upon the other, in the slightest degree. The true meaning is that the whole power of one of these departments should not be exercised by the same hands which possess the whole power of either of the other departments, and that such exercise of the whole power would subvert the principle of a free constitution." Story's Constitution.

[76] "The difference between the departments undoubtedly is that the legislative makes, the executive executes and the judicial construes the law." Mr. Justice Marshall in Wayman v. Southland, 24 U. S. (10 Wheat.) 1, 46, 6 L. ed. 253.

"That which distinguishes a judicial from a legislative act is that the one is a determination of what the existing law is in relation to some existing things already done or happened, while the other is a predetermination of what the law shall be for the regulation of all future cases falling under its provision." Cooley's Constitutional Limitations, 7th ed., 132.

[77] Minneapolis, St. P. & Ste. Marie R. Co. v. Railroad Commission, 136 Wis. 146, 162, 116 N. W. 905.

The separation of the powers of government is complete in theory only. State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 474, 92 Pac. 606.

"The so-called three political estates, the legislative, the executive and the judiciary, seem ever to have been, as they are with us to-day, in a state of flux." 1 Thrope's Hist. U. S. 14.

The idea of a three-department government is common to all the state constitutions as well as to the federal constitution; but provisions vary appreciably as to the delegation of powers that may be exercised by the one department or the other. None of the state constitutions break on a strict line of legislative, executive and judicial functions. And in an exercise of these powers it has not been possible, where found

tive and judicial, there can be no absolute line of demarcation between the functions of these three departments, and where it is scarcely ascertainable whether the several powers conferred by statute belong more properly to the one or to the other departments, and their assignment works no practical encroachment upon the functions of another department, the fact that all such powers are vested in a single body or tribunal will not invalidate the statute.[78] Hence a delegation of power to the Railroad Commission is not in violation of the constitutional

expedient, to observe with exactness absolute lines of cleavage. Oregon R. Nav. Co. v. Campbell, 173 Fed. 957, 969.

The blending of the co-ordinate powers of government in this country in the trenching of one branch of the government upon the powers and functions of another is shown by many particulars, among which are: (1) The powers of the legislature to regulate the procedure in courts of justice and to fix the salaries of the executive officers and the members of courts of justice, and to sit in judgment of removal of the judges from office. (2) The judiciary may pass upon the constitutionality of laws enacted by the legislature, and set them aside where found not to be in accordance with the letter and spirit of the constitution.

These facts demonstrate the impossibility of fixing absolute lines of cleavage so that there will be no trenching, in any degree or measure, of the functions of one department upon those of another. Latitude must be allowed in this matter in order to the greatest practical exercise of the co-ordinate power conferred. That is to say, there is no absolute line of cleavage in governmental range, under our republican form of government, that will leave the one department absolutely free from the domination in some way or measure of another department. As a matter of fact, the concept of our form of government itself carries with it the idea that the powers of one department should be adaptable in and exercise to operate as a check and bar upon the appropriate powers of another department. See Oregon R. & Nav. Co. v. Campbell, 173 Fed. 957, 968.

[78] Oregon R. & Nav. Co. v. Campbell, 173 Fed. 957.

For full collection of authorities, see 10 Cent. Dig., col. 1131, § 48 et seq.; 4 Dec. Dig., p. 1592, § 50 et seq.; Am. Dig., tit. "Constitutional Law," § 50 et seq.

requirements that the legislative,[79] executive and judicial departments shall be kept separate.[80]

The question of the validity of such a delegation arose under the Oregon Railroad Commission Act, passed February 14, 1907.[81] Under the constitution of Oregon, as we have already seen,[82] the powers of government of the state are divided into three separate departments,—the legislative, the executive (including the administrative), and the judicial,—and that no person charged with the official duties under one of these departments is competent to exercise any functions of the other, except as provided in the constitution. The act was held to be constitutional.[83]

The Iowa constitution provides for the same distribution of powers in identically the same terms as the

[79] "The establishment of a rate is the making of a rule for the future, and therefore is an act legislative, not judicial, in kind." Mr. Justice Holmes, in Prentis v. Atlantic Coast Line, 211 U. S. 210, 226, 29 Sup. Ct. 67, 71, 53 L. ed. 151.

"The legislature has power to fix rates, and the extent of judicial interference is to protect against unnecessary rates." Chicago & G. T. R. Co. v. Wellman, 143 U. S. 339, 344, 12 Sup. Ct. 400, 402, 36 L. ed. 176.

[80] See State ex rel. Taylor v. Missouri Pac R. Co., 76 Kan. 467, 92 Pac. 606.

See, also, authorities 10 Cent. Dig., col. 1369, §§ 99, 100, 144.

"The question of the reasonableness of a rate of charge for transportation by a railroad company, involving as it does the element of reason both as regards the company and as regards the public, is eminently a question for judicial investigation requiring due process of law for its determination." Chicago, M. & St. P. R. Co. v. Minnesota, 134 U. S. 418, 458, 10 Sup. Ct. 462, 467, 33 L. ed. 970.

"It is one thing to inquire whether the rates which have been charged and collected are reasonable—that is a judicial act; but an entirely different thing to prescribe rates which shall be charged in the future—that is a legislative act." Interstate Commerce v. Cincinnati, N. O. & Texas Pac. R. Co., 167 U. S. 479, 499, 17 Sup. Ct. 896, 900, 42 L. ed. 243.

[81] Or. Laws 1907, p. 67.

[82] See *ante*, c. 2, § 33.

[83] See § 61, this chapter.

Oregon constitution, with the exception that the executive is not made to include the administrative functions, and no special provision is made otherwise for the establishment of a Railroad Commission;[84] and the delegation of powers under the Iowa Act was held to be constitutional.[85]

The Wisconsin constitution likewise provides for the division of the government into the three separate departments above enumerated, and also provides that no person charged with official duties under one department shall exercise any of the functions under another department, except as otherwise specially provided in the constitution itself;[86] and the Wisconsin Railroad Commission Act, delegating powers to the Commission, was held not to be violative of these provisions of the constitution.[87]

§ 65. Burdening Interstate Commerce.—The power to make necessary and proper[88] regulations[89] in relation to interstate commerce is fixed in Congress, and the states cannot control such commerce.[90] Neither the state nor its officers can unreasonably burden interstate commerce,[91] nor discriminate against such commerce, or interfere with the right to carry it.[92] Congress having

[84] See c. 2, §§ 15, 16.

[85] See *supra*, § 55, this chapter; also, Oregon R. Nav. Co. v. Campbell, 173 Fed. 957.

[86] See c. 2, §§ 40, 41.

[87] See § 63, this chapter; also; Oregon R. & Nav. Co. v. Campbell, 173 Fed. 957.

[88] "Necessary and proper," definition of, as used in commerce clause of the federal constitution. United States v. Hoake, 187 Fed. 992.

[89] "Regulate," as used in the federal constitution, article I, section 8, clause 3, means to control. Titsworth v. State, 2 Okl. Cr. 268, 101 Pac. 288.

[90] As to regulation of interstate and foreign commerce, see Southern Pac. Co. v. Campbell, 189 Fed. 696; also, notes 3 L. R. A. 107; 24 C. C. A. 13; 29 L. ed. U. S. Rep. 158.

[91] Haskell v. Cowhen, 187 Fed. 401.

[92] Haskell v. Cowhen, 187 Fed. 401.

legislated upon the same subject in the Interstate Commerce Act,[93] and having covered the field, the state is excluded from enacting legislation pertaining to the same subject matter.[94] But where Congress has not legislated, the state may regulate, and such regulation will be operative until Congress does act. Where Congress has acted, state legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, encroaches upon the exclusive power of Congress;[95] and a state act incidentally affecting interstate commerce, and in conflict with an act of Congress governing the same subject matter, or an infringement upon the power granted to Congress by the federal constitution, must yield and be superseded by the federal act.[96]

§ 66. —— Foreign Corporations.—A state, under the exercise of its police power, cannot enact laws which will be a burden upon corporations engaged in interstate commerce. Thus a state regulation exacting from foreign corporations engaged in interstate commerce a "charter fee" of a given per cent on the entire authorized capital stock of the corporation, as a condition of continuing to do local business within the state, has been held to be invalid;[97] and the im-

[93] Act February 4, 1887, c. 104; 24 Stats. at Large, 379; U. S. Comp. Stats. 1901, p. 3154; 2 Fed. Stats. Ann. 851, 852, 934, and 3 Fed. Stats. Ann. 809–850.

[94] Southern Pac. Co. v. Campbell, 189 Fed. 693.

[95] Hall v. De Cuir, 95 U. S. 485, 24 L. ed. 547.

[96] St. Louis & S. F. R. Co. v. State, 26 Okl. 62, 107 Pac. 929.

[97] Western Union Tel. Co. v. Kansas, 216 U. S. 1, 30 Sup. Ct. 190, 54 L. ed. 355.

As to exclusion of foreign corporations being an interference with interstate commerce, see notes, 24 L. R. A. 311; 60 L. R. A. 677; 24 C. C. A. 13.

As to license or tax as affecting interstate commerce, see notes, 9 L. R. A. 366; 11 L. R. A. 179; 6 L. ed. U. S. Rep. 23, 678; 32 L. ed. U. S. Rep. 229; 37 L. ed. U. S. Rep. 217; 38 L. ed. U. S. Rep. 1041; 39 L. ed. U. S. Rep. 311, 538.

position by the state of an inspection law burdening a foreign corporation engaged in interstate commerce, or imposing an extra burden upon such commerce within the state, is invalid.[98]

§ 67. —— **Railroads.**—A state regulation requiring all railroads to switch off and deliver without discrimination or unreasonable delay any freight or cars, loaded or empty, billed to any point on their track, or connecting lines, and including intrastate[99] as well as interstate commerce, and making the exchange of all kinds of freight mandatory on connecting railroads, is an invalid regulation by the state, because interfering with the commerce clause[100] of the federal constitution.[101] And a state regulation penalizing a railroad corporation or other carrier for failure to pay

[98] License fee for inspection and grazing of livestock being transported through the state by an interstate carrier is invalid. See State v. Butterfield Livestock Co., 17 Idaho, 441, 106 Pac. 455.

Occupation tax imposed on express companies under ordinance expressly providing it shall not apply except to domestic business is not a regulation of interstate commerce. City of Leavenworth v. Ewing, 80 Kan. 58, 101 Pac. 64.

[99] "Interstate" is not found in the federal constitution, and was probably first used officially in the Interstate Commerce Act of 1887, and means "commerce which is completely internal which is carried on between man and man in a state or between parties of the same state, and which does not extend to or affect other states." Gibbons v. Ogden, 22 U. S. (9 Wheat.) 194, 6 L. ed. 23.

"Intrastate" is the converse of "interstate," and means commerce carried on between persons or corporations of two or more states. The word is not used in the federal constitution and was probably first officially used in the Interstate Commerce Act of 1887, and does not appear to have yet found its way into the law and other dictionaries.

[100] United States Constitution, art. I, section 8.

[101] Southern Pac. Co. v. Campbell, 189 Fed. 696.

Car loaded with intrastate freight placed on sidetrack within yards at destination to await repairs to the automatic coupler, held to be used in interstate commerce when attempting to couple with another car on such track in switching. Delk v. St. L. & S. F. R. Co., 220 U. S. 580, 31 Sup. Ct. 617, 55 L. ed. 590, reversing, 158 Fed. 931, 86 C. C. A. 95, 14 Am. & Eng. Ann. Cas. 233.

a claim for loss or damage within a stipulated time is an unlawful interference with interstate commerce, even as applied to a shipment from without the state, where the statute is construed by the state courts as affecting only the liability of carriers doing business within the state.[102] But a state regulation subjecting railroads to penalties for delay in shipment of freight within the state is not invalid when applied to interstate commerce, for the reason that it tends to aid such commerce by compelling performance of duty to carry and deliver the freight within a reasonable time.[103]

State regulation as to manner in which interstate trains shall approach dangerous crossings within the state is a valid exercise of the state police power, in the absence of congressional action covering the subject matter;[104] but a state regulation requiring the stoppage of trains at junction points with other roads for the transfer of passengers from one road to another, when applied to interstate trains, amounts to an unnecessary and unlawful burden upon interstate

[102] Atlantic Coast Line R. Co. v. Mazursky, 216 U. S. 122, 30 Sup. Ct. 378, 54 L. ed. 411.

As to state statute imposing penalty for failure to settle claims, as an interference with interstate commerce, see Morris-Scarboro-Moffitt Co. v. Southern Ex. Co., 146 N. C. 167, 59 S. E. 667, 15 L. R. A., N. S., 983; Raleigh Iron Works v. Southern R. Co., 148 N. C. 469, 62 S. E. 595; Porter v. Charleston & S. R. Co., 63 S. C. 169, 41 S. E. 108, 90 Am. St. Rep. 670; Cooper v. Seaboard Air Line R. Co., 78 S. C. 81, 58 S. E. 930; Coffey v. Atlantic Coast Line R. Co., 79 S. C. 150, 60 S. E. 447; De Lorme v. Atlantic Coast Line R. Co., 79 S. C. 370, 60 S. E. 440; Winslow v. Atlantic Coast Line R. Co., 70 S. C. 344, 60 S. E. 709.

[103] Traynham v. Charleston & W. C. R. Co. (S. C.), 71 S. E. 813. See Hunter v. Charleston & W. C. R. Co., 81 S. C. 169, 62 S. E. 13; Hanley v. Kansas C. St. R. Co., 187 U. S. 617, 23 Sup. Ct. 214, 47 L. ed. 333; Pacific Coast S. S. Co. v. Railroad Commissioners, 9 Saw. 253, 18 Fed. 10.

[104] Southern Pac. R. Co. v. King, 217 U. S. 524, 30 Sup. Ct. 594, 54 L. ed. 868.

commerce in those cases where ample provisions are already made by the roads for the traveling public.[105]

State regulation requiring carriers to supply cars to shippers on demand for the purpose of moving interstate shipments, which interferes with the rules and regulations of the American Railway Association for interchange of cars, has been held to be unconstitutional;[106] but a state regulation prescribing a minimum of three brakemen for freight trains of more than twenty-five cars, operating within the state, is not an unconstitutional regulation of interstate commerce when applied to a foreign railroad company engaged in such commerce within the state.[107]

§ 68. Subjects of Interstate Commerce Regulation. We have already seen that interstate commerce is subject entirely to regulation by Congress, to the exclusion of the powers of the state acting under its police power, where Congress has acted upon the subject matter.[108] "Interstate" and "intrastate" commerce are defined as above pointed out.[109] "Commerce" denotes and means merely a mutual selling or traffic, but is a term of the largest import, including intercourse for the purpose of trade in any and all its forms.[110]

[105] Herndon v. Chicago, R. I. & P. R. Co., 218 U. S. 135, 30 Sup. Ct. 633, 54 L. ed. 633.

[106] St. Louis & S. W. R. Co. v. Arkansas, 217 U. S. 136, 30 Sup. Ct. 476, 54 L. ed. 698.

[107] Chicago, R. I. & P. Co. v. Arkansas, 219 U. S. 453, 31 Sup. Ct. 275, 55 L. ed. 290. See Nashville, C. & St. L. R. Co. v. Alabama, 128 U. S. 96, 9 Sup. Ct. 28, 32 L. ed. 352, 2 Inters. Com. Rep. 238; New York, N. H. & H. R. Co. v. New York, 165 U. S. 628, 17 Sup. Ct. 418, 41 L. ed. 853.

[108] See § 65, this chapter.

[109] See footnote 99, this chapter.

[110] Gibbons v. Ogden, 22 U. S. (9 Wheat.) 1, 194, 240, 6 L. ed. 23; Welton v. Missouri, 91 U. S. 281, 23 L. ed. 347.

Shipment of bottles of medicine from one state to another is interstate commerce. See United States v. Tucker, 188 Fed. 741.

As to canvassers and solicitors, see § 69, this chapter.

But all things incident to commerce are not included in it.[111] Thus, it has been held that the following things are not included in "commerce," to wit: (1) Bills of exchange;[112] (2) insurance;[113] (3) trademarks;[114] (4) manufacturing,[115] and the like. But the transportation of persons and goods is "commerce."[116]

As to hawkers and peddlers, see § 76, this chapter.

As to intoxicating liquors, see §§ 71, 73, 80, this chapter.

As to traveling salesmen and sales made by them, see §§ 69 and 75, this chapter.

As to what constitutes "commerce," see 2 Dig. U. S. Reps. (Co-op. ed.), p. 1383, pars. 37–51, and cases there cited.

Interstate commerce consists in the transportation from a point in one state to a point in another state. Oregon R. & Nav. Co. v. Campbell, 180 Fed. 253.

[111] As to right of state by statute to prevent waste of subterranean waters, natural gas, and oil, which are the subject of interstate commerce, see note, 23 L. R. A., N. S., 436.

[112] Nathan v. Louisiana, 49 U. S. (8 How.) 73, 12 L. ed. 992.

See Williams v. Fears, 179 U. S. 277, 21 Sup. Ct. 131, 45 L. ed. 189.

See, also, note, 12 Am. St. Rep. 561.

[113] Paul v. Virginia, 75 U. S. (8 Wall.) 168, 19 L. ed. 357; Insurance Company v. State, 86 Tex. 265, 24 S. W. 401, 22 L. R. A. 491; distinguished in Aetna Ins. Co. v. Commonwealth, 106 Ky. 879, 51 S. W. 627, in which it is held that combination by insurance companies for the purpose of maintaining rates is not in violation of the anti-trust law (Ky. Stats., § 3915).

Life insurance business conducted within a state by a foreign corporation is not commerce within the meaning of the federal constitution, article I, section 8. New York Life Ins. Co. v. Deerlodge County (Mont.), 115 Pac. 911.

[114] Trademark Cases (United States v. Steffens), 100 U. S. 82, 25 L. ed. 550.

[115] United States v. E. C. Knight Co., 156 U. S. 1, 15 Sup. Ct. 249, 39 L. ed. 325.

Commerce succeeds manufacturing and is not a part of it; and the relation of manufacturing to interstate commerce is only incidental and not direct. United States v. E. C. Knight Co., 156 U. S. 1, 15 Sup. Ct. 249, 39 L. ed. 325.

[116] Passenger Cases (Smith v. Turner), 48 U. S. (7 How.) 283, 12 L. ed. 702; Crandall v. Nevada, 73 U. S. (6 Wall.) 35, 18 L. ed. 744, 745; Henderson v. Wickham, Mayor of New York, 92 U. S. 259, 23 L. ed. 543.

"Interstate commerce," as used in the United States, denotes a commerce between the states or between persons of different states of the Union. The phrase in the federal constitution is "commerce among the states," which has been interpreted to be "very properly restricted to the commerce which concerns more than one" state, or persons situated in more than one state.[117] It has been said that commerce between two persons within the same state is not "interstate commerce," even in those cases where there is a temporary deviation to the soil of another state in the course of the transportation between two points within the state;[118] but the better view is thought to

[117] Mr. Chief Justice Marshall, in Gibbons v. Ogden, 22 U. S. (9 Wheat.) 194, 6 L. ed. 23.

As to interstate commerce, see an interesting collection of authorities not found elsewhere in 2 Obliter Dig. 1–42.

[118] See Lehigh Valley R. Co. v. Pennsylvania, 145 U. S. 192, 12 Sup. Ct. 806, 36 L. ed. 672, approved in Seawell v. Kansas City, Ft. S. & M. R. Co., 119 Mo. 235, 238, 24 S. W. 1004, 1006 (upholding penalties for "long and short haul regulations"); Campbell v. Chicago, M. & St. P. R. Co., 86 Iowa, 587, 53 N. W. 351, 17 L. R. A. 444; State v. Western Union Tel. Co., 113 N. C. 223, 18 S. E. 391, 22 L. R. A. 571; Leavell v. Western Union Tel. Co., 116 N. C. 220, 21 S. E. 391, 47 Am. St. Rep. 798, 27 L. R. A. 843 (upholding state tariff on telegrams); Western Union Tel. Co. v. Hughes, 104 Va. 241, 51 S. E. 225 (both ends of telegraph line being within state, but passing without the state and returning in its course between the points, held company not exempt from state penalties for delay); United States v. Lehigh Valley R. Co., 115 Fed. 374 (upholding federal courts cannot mandamus railroads as to rates for same commodity between two points within a state, because the road extends beyond the boundaries of the state); People v. Knight, 171 N. Y. 363, 64 N. E. 155 (cab service maintained in New York City but interstate railroad is no part of their interstate commerce); Western Union Tel. Co. v. Reynolds, 100 Va. 465, 41 S. E. 857, 93 Am. St. Rep. 973 (enforcing penalties for failure to forward message from relay office, where the message in its course passed a part of the way over the line in another state, both terminals being within the state of Virginia).

See note, 27 Am. St. Rep. 560.

The Lehigh Valley case above referred to has been distinguished by the supreme court, holding that where a railroad with its termini within the state passes during a portion of its course over the territory

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be that wherever goods or passengers transported from one point to another point within the same state, during the course of the journey, pass into and over the soil of another state, then the carriage becomes interstate commerce within the definition above given.[119]

§ 69. —— Canvassers and Solicitors engaged in securing orders for goods manufactured out of the state and to be shipped into the state are engaged in interstate commerce, and are not subject to regulation by the state.[120]

§ 70. —— Carriage of Expressage from one point in the state to another point in the state does not constitute interstate commerce.[121]

§ 71. —— Intoxicating Liquors.—Importing beer into the state and selling it in the original packages constitutes interstate commerce,[122] and liquors shipped

of another state, the first state cannot regulate the charge for carriage of goods between the two termini, where such goods in the course of their transportation must of necessity be hauled through the territory of another state. Hanley v. Kansas City S. R. Co., 187 U. S. 617, 23 Sup. Ct. 215, 47 L. ed. 333, affirming 106 Fed. 259.

[119] Frayham v. Charleston & N. C. R. Co. (S. C.), 71 S. E. 813; Sternberger v. Cape Fear & Y. V. R. Co., 29 S. C. 510, 7 S. E. 836, 2 L. R. A. 105; State v. Haleyman, 55 S. C. 207, 31 S. E. 362, 33 S. E. 366, 45 L. R. A. 567; Frasier v. Charleston & W. C. R. Co., 81 S. C. 162, 62 S. E. 14; Hunter v. Charleston & W. C. R. Co., 81 S. C. 169, 62 S. E. 13; Hanley v. Kansas City St. R. Co., 187 U. S. 617, 23 Sup. Ct. 214, 47 L. ed. 333.

[120] Wilcox v. People, 46 Colo. 382, 104 Pac. 408.

See, also, *post*, § 75, this chapter.

[121] See State v. United States Express Co. (Minn.), 131 N. W. 489.

As to hawkers and peddlers and "itinerant venders," see *post*, § 76, this chapter.

As to restriction by correspondence school being interstate commerce, see International Text-book Co. v. Pigg, 217 U. S. 91, 30 Sup. Ct. 481, 54 L. ed. 678.

[122] State v. Pabst Brewing Co. (La.), 55 So. 349.

As to original packages, see §§ 73 and 80, this chapter.

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by carriers from one state to another are not subject to regulation by the state law governing intoxicating liquors until after they have been delivered to the consignor and cease to be subjects of interstate commerce.[123] State courts cannot enjoin carriers from receiving intoxicating liquors at a point without the state consigned to a person within the state, even where the consignee intends to sell such liquor in violation of the state law.[124]

Prohibition laws passed by a state are a valid exercise of the police power of the state, and do not relate to or in any way conflict with interstate commerce.[125] Such laws, however, cannot prevent a resident of such state passing prohibitory laws from ordering intoxicating liquors in another state and having them sent to him by an interstate carrier for consumption by himself and family.[126]

[123] St. Louis & S. F. R. Co. v. State, 26 Okl. 300, 109 Pac. 230.

But a brewer or owner of intoxicating liquors in one state cannot send an agent or canvasser into a prohibition state to solicit orders for the purchase of such liquors in violation of the laws of the latter state. See *post*, footnotes 126, 131, this chapter, and text going therewith.

[124] Gulf, C. & S. F. R. Co. v. State (Okl.), 116 Pac. 176.

[125] McCord v. State, 2 Okl. Cr. 214, 101 Pac. 280.

[126] Schwedes v. State, 1 Okl. Cr. 660, 104 Pac. 765; High v. State, 2 Okl. Cr. 161, 101 Pac. 115; Hudson v. State, 2 Okl. Cr. 176, 101 Pac. 275; McCord v. State, 2 Okl. Cr. 214, 101 Pac. 280; Moreland v. State, 2 Okl. Cr. 237, 101 Pac. 138.

Regulation of the taking of orders for intoxicating liquors within the state, though such liquor is situated in another state, is a valid exercise of the police power of the state, and not repugnant to the commerce clause of the federal constitution. State v. Lemp Brewing Co., 79 Kan. 705, 102 Pac. 504.

Advertisement for sale of liquors sold or kept for sale without the state may be prohibited within the state, and such prohibition in no way interferes with the commerce clause of the federal constitution since the passage of the Wilson Act, withdrawing, to a certain extent, intoxicating liquors from the protection of that clause of the constitution. State v. State Capital Co., 24 Okl. 252, 103 Pac. 1021.

Brewer, distiller, or owner of intoxicating liquors cannot send an agent or canvasser into another state, in which state a prohibitory liquor law is in force, to solicit orders for the purchase of intoxicating liquors

§ 72. —— Natural Gas belonging to the owner of the land, when once reduced to possession, may become the subject of both intrastate and interstate commerce and regulation.[127]

§ 73. —— Original Packages.—Where goods are shipped in original packages from one state to another they are interstate commerce until they are delivered to the consignee, at which time the power of the state attaches to such package and to the goods therein immediately upon the delivery to such consignee.[128]

§ 74. —— Pipe-lines laid for the purpose of carrying natural gas, oil, etc., in interstate business are within the protection of the commerce clause of the federal constitution.[129]

§ 75. —— Sale by Sample.—The sale of goods or merchandise by sample or catalogue, where the goods thus sold are situated or to be manufactured out of the state and to be shipped within the state and there

in violation of the prohibitory law of such other state. See § 71, this chapter, and especially footnote 131.

[127] West v. Kansas City Natural Gas Co., 221 U. S. 229, 31 Sup. Ct. 564, 55 L. ed. 716, affirming Kansas Natural Gas Co. v. Haskell, 172 Fed. 545.

See, also, note, 12 L. R. A. 652.

[128] State v. Eighteen Casks of Beer, 24 Okl. 786, 104 Pac. 1093.

As to when original packages shipped from another state lose their character as interstate commerce, see §§ 79 and 80, this chapter, and authorities in footnote 141.

Consignee of original package of intoxicating liquors shipped from another state into the state of Oklahoma is entitled to receive the original package at the depot and transport the same to his home. High v. State, 2 Okl. Cr. 161, 101 Pac. 115; Moreland v. State, 2 Okl. Cr. 237, 101 Pac. 138; Hudson v. State, 2 Okl. Cr. 76, 101 Pac. 275; McCord v. State, 2 Okl. Cr. 214, 101 Pac. 280.

As to the nature of an original package as governed by the interstate commerce law, see Ex parte Agnew (Neb.), 131 N. W. 817; Ex parte King (Neb.), 131 N. W. 820.

[129] See Haskell v. Cowhen, 187 Fed. 401.

delivered, constitutes interstate commerce.[130] But the owner of intoxicating liquors in one state cannot send an agent or solicitor of orders for the purchase of such liquor in violation of the laws of such state.[131]

§ 76. —— Hawkers and Peddlers and "Itinerant Venders."—Hawkers and peddlers and "itinerant venders" are not within the protection of the interstate commerce clause of the federal constitution;[132] and a person maintaining a general store in the city of another state and traveling from place to place taking orders for his goods and subsequently packing the goods in packages without mark or direction and shipping them into the state for the purpose of delivery, and then delivering such as are accepted and such as are rejected storing in a storehouse provided within the state for that purpose, is not carrying on

[130] Wilcox v. People, 46 Colo. 382, 104 Pac. 408. See City of Kinsley v. Dyerly, 79 Kan. 1, 98 Pac. 228; State v. Glasby, 50 Wash. 598, 97 Pac. 734; State v. Davis, 50 Wash. 704, 97 Pac. 737.

Picture frames sold by sample to be manufactured in another state and sent by express either to the purchaser or to the agent, and the moneys collected and sent to the manufacturer, is interstate business. Brennan v. Titusville, 153 U. S. 289, 14 Sup. Ct. 829, 38 L. ed. 719.

Selling knives by sample without having a stock along, or any place within the state from which to furnish customers or fill orders, and every knife for which order was taken filled by a firm from without the state, constitutes interstate commerce. People v. Bunker, 128 Mich. 160, 87 N. W. 90.

[131] Creigter v. Shepler, 77 Kan. 834, 101 Pac. 619; State v. Sherman, 81 Kan. 874, 107 Pac. 33.

[132] People v. Stewart (Mich., Nov. 3, 1911), 132 N. W. 1070; Jewel Tea Co. v. Lee's Summit, 189 Fed. 280; People v. Sawyer, 106 Mich. 428, 64 N. W. 33; City of Muskegon v. Zeeryp, 134 Mich. 181, 96 N. W. 502; City of Alma v. Clow, 146 Mich. 443, 109 N. W. 853; People v. Smith, 147 Mich. 391, 110 N. W. 1102; City of Muskegon v. Hanes, 149 Mich. 460, 112 N. W. 1077; Despres v. Zierleyn, 163 Mich. 399, 128 N. W. 769.

As to acts regulating, being an interference with interstate commerce, article I, section 8 of the Federal Constitution, see Smith v. Farr, 46 Colo. 364, 104 Pac. 401; State v. Boyer, 34 Utah, 257, 97 Pac. 129.

interstate commerce, and is not within the protection of the commerce clause of the federal constitution.[183]

§ 77. —— **Telegraph Companies** accepting provisions of act of Congress July 24, 1866, become agencies of the federal government for the transaction of political business and are instrumentalities of interstate and foreign commerce.[184]

§ 78. —— **Waters** of the United States are within the power of Congress to regulate commerce thereon;[185] but we have already seen that the state has power to prohibit the waste of subterranean waters, natural gas or oil within the state, in the exercise of its police power.[186]

[183] People v. Stewart (Mich., Nov. 3, 1911), 132 N. W. 1070, distinguishing People v. Bunker, 128 Mich. 160, 87 N. W. 90.

[184] State v. Northwestern Tel. Co. (Mont.), 117 Pac. 93.

As to taxation by the state of telegraph lines engaged in interstate and foreign commerce, see State v. Western Union Tel. Co. (Mont.), 117 Pac. 93, citing Telegraph Co. v. Texas, 105 U. S. 460, 26 L. ed. 1067; Rotterman v. Western Union Telegraph Co., 127 U. S. 411, 8 Sup. Ct. 1127, 32 L. ed. 229; Leloup v. Port of Mobile, 127 U. S. 640, 8 Sup. Ct. 1383, 32 L. ed. 311; Osborne v. Florida, 164 U. S. 654, 17 Sup. Ct. 214, 41 L. ed. 586.

As to power of state to control or impose burdens upon interstate telegraph and telephone companies, see note, 24 L. R. A. 161.

Assessment of franchise of telegraph company, consisting of a valuation of the right or privilege of carrying on business within a designated county, with no separate valuation on the right to do interstate private business, is void. State v. Western Union Tel. Co. (Mont.), 117 Pac. 93.

"Within said county," in a valuation of a telegraph company's franchise, has reference to business originating within and terminating in offices situate within such county and does not relate to business wholly between offices within the county. State v. Western Union Tel. Co. (Mont.), 117 Pac. 93. See Charleston v. Postal Tel. Co., 3 Am. Elect. Cas. 56, 9 Ry. & Corp. L. J. 129; Western Union Tel. Co. v. Meyer, 38 Fed. 53, 3 L. R. A. 449; Pensacola Tel. Co. v. Western Union Tel. Co., 96 U. S. 1, 24 L. ed. 78; Western Union Tel. Co. v. Texas, 105 U. S. 460, 26 L. ed. 1067.

[185] Williams v. Molter, 187 Fed. 700.

[186] See *supra*, footnote 111, this chapter.

§ 79. Loss of Character of Interstate Commerce.—Goods shipped from a point without the state to a designated point within the state and there delivered are interstate commerce, but such shipment originating as interstate commerce may lose its character as such and become subject to state control.[187] When a commodity transported has reached the termination of its journey and has been delivered to the consignee, it ceases to be the subject of interstate commerce, and the subsequent shipment from the point of delivery to another point within the same state is an interstate and not an intrastate shipment, and subject exclusively to state control.[188]

[187] Ex parte Agnew (Neb.), 131 N. W. 817; Ex parte King (Neb.), 131 N. W. 820.

[188] See Oregon R. & Nav. Co. v. Campbell, 180 Fed. 253. See, also, The Daniel Ball v. United States, 77 U. S. (10 Wall.) 557, 565, 19 L. ed. 999; Sands v. Manistee River Imp. Co., 123 U. S. 288, 295, 8 Sup. Ct. 113, 31 L. ed. 149; Gulf C. & S. F. R. Co. v. Texas, 204 U. S. 403, 27 Sup. Ct. 361, 51 L. ed. 514; General Oil Co. v. Crain, 209 U. S. 211, 28 Sup. Ct. 475, 52 L. ed. 754.

As to when an interstate shipment ceases to be interstate commerce, see General Oil Co. v. Crain, 209 U. S. 211, 28 Sup. Ct. 275, 52 L. ed. 754.

A rate was established for transportation of tobacco from Nashville, Tennessee, to Louisville, Kentucky, at twelve cents per hundred pounds, presumably so fixed on account of water competition between the same points. The same railroad established from Franklin, Kentucky, to Louisville, Kentucky, a rate of twenty-five cents per hundred pounds, Franklin, Kentucky, being a point on the road from Nashville, Tennessee, to Louisville, Kentucky, but the Kentucky constitution had prohibited common carriers to charge more for a shorter that for a longer haul over the same line under substantially similar circumstances and conditions. In an action brought to recover the excess between twelve cents and twenty-five cents per hundred pounds on a shipment of tobacco from Franklin to Louisville, Kentucky, the supreme court of the United States held that in so far as the constitution of the state of Kentucky sought to regulate, to some extent, the interstate commerce of carriers, which power of regulation the constitution of the United States gave to the federal Congress, it was invalid. Louisville & N. R. Co. v. Eubank, 184 U. S. 27, 22 Sup. Ct. 277, 46 L. ed. 416.

That is to say, the state has no power, either through its legislature or through a Commission, to fix rates for or to regulate to any extent commerce between the states.

A shipment from a point within the state to another point within the same state is purely state commerce, and not subject to regulation by the act controlling intrastate and foreign commerce; but such a shipment loses its character as state commerce and becomes intrastate commerce when in the course of the shipment the goods pass over a portion of the road situate without the boundaries of the state.[139] A different view has been expressed, but it is thought not to be the better doctrine.[140]

§ 80. —— **Original Packages.**—Merchandise transported in original packages from without the state to the termination of their journey within the state, on delivery there to the consignee, ceases to be the subject of interstate commerce, and any subsequent shipment thereof from the point of delivery to another point within the state is an interstate shipment, and is governed by the local freight rates prescribed in the manner provided for by the Railroad Commission Act.[141]

[139] Frayham v. Charleston & N. C. R. Co. (S. C.), 71 S. E. 813; Sternberger v. Cape Fear & Y. V. R. Co., 29 S. C. 510, 7 S. E. 836, 2 L. R. A. 105; State v. Haleyman, 55 S. C. 207, 31 S. E. 362, 33 S. E. 366, 45 L. R. A. 567; Frasier v. Charleston & W. C. R. Co., 81 S. C. 162, 62 S. E. 14; Hunter v. Charleston & W. C. R. Co., 81 S. C. 169, 62 S. E. 13; Hanley v. Kansas C. St. R. Co., 187 U. S. 617, 23 Sup. Ct. 214, 47 L. ed. 333.

[140] See *supra*, authorities in footnote 118, and the text going therewith, in this chapter.

[141] Oregon R. & Nav. Co. v. Campbell, 180 Fed. 253.

The principle of the two cases was held not to be the same, notwithstanding the fact that "the transportation of freight or of subjects of commerce, for the purpose of exchanging or selling, is beyond all question a constituent of commerce itself." While an importer may insist that he has a right to sell goods that he has brought into the state from another state, while in the original packages, it does not follow that a carrier has the right to treat those goods as interstate goods so long as they remain in that condition or unsold by the importer. The carrier depends upon the contract of carriage, and interstate traffic as to him depends upon whether he is called upon to transport from one state

§ 81. Quarantine Regulation.—The state through its legislature, or the legislature through its Railroad Commission, or otherwise, may provide quarantine and other sanitary regulations preventing the bringing of infected stock within the state, such action being valid as a reasonable exercise of the police power of the state.[142]

to another, or to serve his patrons by transportation wholly within the limits of a single state. See Gulf C. & S. F. R. Co. v. Texas, 24 U. S. 403, 27 Sup. Ct. 360, 51 L. ed. 540. See as supporting these conclusions by parity of reasoning, American Steel & Wire Co. v. Speed, 192 U. S. 500, 24 Sup. Ct. 365, 48 L. ed. 538; General Oil Co. v. Crain, 209 U. S. 211, 28 Sup. Ct. 475, 52 L. ed. 754.

In this case the contention of the railroad company was that the goods included in the shipment partook of the character of interstate commerce, and should take the rate under the tariff L. 525, notwithstanding the transportation thereof was wholly within the state, for the reason that the goods were shipped into the state in original packages, and that they were shipped from the point of arrival within the state to another point within the state in the same original package. In other words, the contention of the railroad was that goods remain in law and character as interstate commerce while handled in the original package in which they entered the state; which contention would lead to the doctrine that "once interstate commerce in the original package, always interstate commerce," until the original package is broken, and Judge Wolverton said this idea is passed on in cases known as the Original Package Cases by the supreme court, the leading one being Leisg v. Hardin, 135 U. S. 100, 10 Sup. Ct. 681, 34 L. ed. 128.

See, also, § 73, this chapter, and the authorities cited in footnote 128.

[142] Patrick v. State, 17 Wyo. 260, 99 Pac. 588.

CHAPTER IV.

TITLES OF ACT.

§ 82. The Long Title.
§ 83. The Short Title.

§ 82. The Long Title.—An act to provide for the organization of the railroad commission, to define its powers and duties and the rights, remedies, powers and duties of public utilities, their officers, define its powers and duties and the rights, remedies, of patrons of public utilities, and to provide penalties for offenses by public utilities, their officers, agents and employees and by other persons and corporations, creating the "Railroad Commission Fund" and appropriating the moneys therein to carry out the provisions of this act, and repealing the railroad commission act, approved February 10, 1911, and also repealing an act entitled "An act to amend the railroad commission act by amending section fifteen thereof relating to powers and duties of the railroad commission of the State of California, and to amend section thirty-seven thereof relating to free and reduced-rate transportation for freight and passengers," approved April 6, 1911, and all acts and parts of acts inconsistent with the provisions of this act.[1]

[1] Title of Act, c. 14, Extraordinary Session 1911, p. 18.

The title of this act is manifestly sufficient for all the purposes intended to be accomplished by the body of the act. The supreme court has recently passed upon the title to an act somewhat similar in the object to be accomplished, which was expressed by the title as follows: "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition and construction thereby of works for the lands embraced within such districts, and, also, to provide for the distribution of water for irrigation purposes." In the body of the act, it was provided by sections 68–72 (*post*, c. 9, § 361 et seq.) for the institution and prosecution, by the district, of proceedings for determining the validity of assessments. The question was as to validity of the statute on account of these provisions for determination of validity of assessments, the claim being that such proceedings were so

§ 83. The Short Title.—The people of the state of California do enact as follows:

This act shall be known as the "Public Utilities Act" and shall apply to the public utilities and public

foreign to the title of the act as to render it void under the provisions of California Constitution, article IV, section 24. This contention the supreme court refused to uphold, saying: "It will be found repeatedly declared in our decisions, that the purpose of the constitutional provision is, not to destroy legislation germane to the general object declared in the title, but to protect against the passage of clauses and provisions foreign to the title, subject, and purpose of the act—deceptive legislation adroitly introduced and hidden in the body of the act." In re Bonds of So. San Joaquin Irr. Dist. (Cal.), 119 Pac. 198, citing People v. Linda Vista Irr. Dist., 128 Cal. 477, 61 Pac. 86; Law v. San Francisco, 144 Cal. 388, 77 Pac. 1014; People v. Sacramento Drainage Dist., 155 Cal. 373, 103 Pac. 207.

In the case of In re Bonds of the So. San Joaquin Irr. Dist. (Cal.), 119 Pac. 198, the supreme court further says: "The matter of the proceeding to test the legality of the assessments and of bond issues of the district under this broad and reasonable view comes clearly within the scope of the general purposes of the Irrigation Act"; citing Anderson v. Grand Valley Irr. Dist., 35 Colo. 525, 85 Pac. 313.

The provisions of section 24, article IV, of the constitution are mandatory. Ex parte Liddell, 93 Cal. 633, 29 Pac. 251.

As to acts held to be valid or invalid, on account of sufficiency or insufficiency of title, see Treadwell's Annotated Constitution, pp. 94–97.

The purpose of section 24 is to protect members of the legislature as well as the public against fraud from deceitful and misleading titles to statutes. Ex parte Liddell, 93 Cal. 633, 29 Pac. 251; Abeel v. Clark, 84 Cal. 226, 24 Pac. 383.

The title to an act is not required to embrace an abstract or a catalogue of the contents of the act. Abeel v. Clark, 84 Cal. 226, 24 Pac. 383; Ex parte Liddell, 93 Cal. 633, 29 Pac. 251; People v. Superior Court, 100 Cal. 105, 34 Pac. 492; People v. Linda Vista Irr. Dist., 128 Cal. 477, 61 Pac. 86; Hellman v. Shoulters, 114 Cal. 136, 44 Pac. 915, 45 Pac. 1057.

The provisions of this section of the constitution are to be liberally construed and the legislature given much discretion. Ex parte Liddell, 93 Cal. 633, 29 Pac. 251; Abeel v. Clark, 84 Cal. 266, 24 Pac. 383.

A single act cannot contain incongruous parts, or accomplish unconnected or dissimilar subjects to the object expressed in the title. People v. Parks, 58 Cal. 624.

One subject only is to be included in the title of an act; but numerous provisions having one general object, which object is fully indicated by the title of the act, may be united. Ex parte Liddell, 93 Cal. 633,

services herein described and to the commission herein referred to.[2]

29 Pac. 251; People v. Parks, 58 Cal. 624; Ex parte Kohler, 74 Cal. 38, 15 Pac. 436; De Witt v. San Francisco, 2 Cal. 289.

The title of an act cannot restrain or control any positive provisions of the act, and is to be resorted to as a means of ascertaining the intention of the legislature in those cases only in which the body of the act is doubtful. People v. Abbott, 16 Cal. 358; Bonds v. Jones, 51 Cal. 303; Matter of Boston Mining & M. Co., 51 Cal. 624; Harris v. Supervisors, 52 Cal. 553.

Where the title of an act is of such a character as to mislead the public or the members of the legislature in regard to the subjects embraced within it, the act will be void. Wood v. Election Commissioners, 59 Cal. 561.

[2] Chapter 14, § 1, Extraordinary Session 1911, p. 18.

CHAPTER V.

DEFINITIONS.

§ 84. "Commission."
§ 85. "Commissioner."
§ 86. "Corporation."
§ 87. "Person."
§ 88. "Transportation of Persons."
§ 89. "Transporfation of Property."
§ 90. "Street Railroads."
§ 91. "Street Railroad Corporations."
§ 92. "Railroad."
§ 93. "Railroad Corporation."
§ 94. "Express Corporation."
§ 95. "Common Carrier."
§ 96. "Pipe-line."
§ 97. "Pipe-line Corporation."
§ 98. "Gas Plant."
§ 99. "Gas Corporation."
§ 100. "Electric Plant."
§ 101. "Electrical Corporation."
§ 102. "Telephone Line."
§ 103. "Telephone Corporation."
§ 104. "Telegraph Line."
§ 105. "Telegraph Corporation."
§ 106. "Water System."
§ 107. "Water Corporation."
§ 108. "Vessel."
§ 109. "Wharfinger."
§ 110. "Warehouseman."
§ 111. "Public Utilities."

§ 84. "Commission."—The term "commission," when used in this act, means the Railroad Commission of the state of California.[1]

§ 85. "Commissioner."—The term "commissioner," when used in this act, means one of the members of the Commission.[2]

[1] Chapter 14, § 2 (a), Extraordinary Session 1911, p. 18.
[2] Section 2 (b), p. 18.

§ 86. "Corporation."—The term "corporation," when used in this act, includes a corporation, a company, an association and a joint-stock association.[3]

§ 87. "Person."—The term "person," when used in this act, includes an individual, a firm and a copartnership.[4]

[3] Section 2 (c), p. 18.

[4] Section 2 (d), p. 19.

"Person" within the meaning of the Fourteenth Amendment to the federal constitution, forbidding the state to deny to any person the equal protection of the law, includes a railroad corporation. Portland R. L. & P. Co. v. Railroad Commission (Or.), 109 Pac. 273.

See 10 Cent. Dig., col. 2102, § 680; 4 Dec. Dig., p. 1786, § 210; 6 Words and Phrases, 5322–5335; 8 Words and Phrases, 7752.

Any corporation also included within the term "person." Portland, R. L. & P. Co. v. Railroad Commission (Or.), 109 Pac. 273.

A forwarding agent is a person, within the meaning of section 2 of the Interstate Commerce Act of February 2, 1887, forbidding preferences. Interstate Commerce Commission v. Delaware, L. & W. R. Co., 220 U. S. 235, 31 Sup. Ct. 392, 55 L. ed. 448. See Export Shipping Co. v. Wabash R. Co., 14 Int. Com. Rep. 437–443.

The provisions of section 2 of the act to regulate interstate commerce were taken substantially from section 90 of the English Railway Clause Consolidation Act of 1845, known as the "Equality Clause." Texas & P. R. Co. v. Interstate Commerce Commission, 162 U. S. 197, 222, 16 Sup. Ct. 661, 40 L. ed. 940, 948, 5 Int. Com. Rep. 405; Interstate Commerce Commission v. Delaware, L. & W. R. Co., 220 U. S. 235, 253, 31 Sup. Ct. 392, 55 L. ed. 448, 457.

Certain, also, it is that, at the time of the passage of the act to regulate interstate and foreign commerce, section 90 of the English Act had been construed as embracing only circumstances concerning the carriage of the goods, and not as embracing the person of the sender; or, in other words, that the clause did not allow carriers by railroad to make a difference in rates because of differences in circumstances arising either before the service of the carrier began or after it was terminated. It was therefore the settled policy in England, at the time of the adoption of the section in this country, that the clause forbade the charging of a higher rate for the carriage of goods for one intercepting or forwarding agent than for others. Interstate Commerce Commission v. Delaware, L. & W. R. Co., 220 U. S. 235, 253, 31 Sup. Ct. 392, 55 L. ed. 448, 457. See, also, Great Western R. Co. v. Sutton (1869), L. R. 4 H. L. 226; Evershed v. London & N. W. R. Co. (1878), L. R. 3 App.

§ 88. "Transportation of Persons."—The term "transportation of persons," when used in this act, includes every service in connection with or incidental to the safety, comfort or convenience of the person transported and the receipt, carriage and delivery of such person and his baggage.[5]

§ 89. "Transportation of Property."—The term "transportation of property," when used in this act, includes every service in connection with or incidental to the transportation of property, including in particular its receipt, delivery, elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and handling, and the transmission of credit by express corporations.[6]

§ 90. "Street Railroads."—The term "street railroad," when used in this act, includes every railway, and each and every branch or extension thereof, by whatsoever power operated, being mainly upon, along, above or below any street, avenue, road, highway, bridge or public place within any city and county, or city or town, together with all real estate, fixtures and personal property of every kind used in connection

Cas. 1029, 5 Eng. Rul. Cas. 351; Denaby Main Colliery Co. v. Manchester, S. & L. R. Co. (1885), L. R. 11 App. Cas. 97.

"It cannot be doubted that this settled meaning which was affixed to the English equality clause at the time of the adoption of the act to regulate commerce applies in construing section 2 of that act; certainly to the extent that its interpretation is involved in the matter before us." Interstate Commerce Commission v. Delaware, L. & W. R. Co., 220 U. S. 235, 253, 31 Sup. Ct. 392, 55 L. ed. 448, 457, citing Wight v. United States, 167 U. S. 512, 17 Sup. Ct. 822, 42 L. ed. 258; Interstate Commerce Commission v. Alabama Midland R. Co., 168 U. S. 144, 18 Sup. Ct. 45, 42 L ed. 414, 423.

[5] Section 2 (e), p. 19.

[6] Section 2 (f), p. 19.

Transportation of goods over receiving and connecting lines on a through bill of lading to a point beyond the state boundary is interstate commerce and not the subject of state regulation. Missouri, K. & T. R. Co. v. New Era Milling Co., 80 Kan. 141, 101 Pac. 1011.

therewith, owned, controlled, operated or managed for public use in the transportation of persons or property; but the term "street railroad," when used in this act, shall not include a railway constituting or used as a part of a commercial or interurban railway.[7]

[7] Section 2 (g), p. 19.

Street railroads are included in the phrase "public utilities." See *post*, § 111.

"Street railroad" applies only to such roads, the rails of which are laid to conform to the grade and surface of the street, and which are otherwise constructed so that the public are not excluded from the street as a public highway, which run at a moderate rate of speed compared with commercial railroads, which do not carry freight but only passengers from one part of a thickly populated district to another in a town or city and its suburbs. Bloxham v. Consumers' Elec. Light & St. R. Co., 36 Fla. 539, 18 So. 444, 51 Am. St. Rep. 44. See *post*, § 92, note.

"Transportation company," as used in article XII, section 12, of the California Constitution, defining powers and duties of Board of Railroad Commissioners, does not include street railway company (Temple, J., dissenting). Board of Railroad Com. v. Market St. R. Co., 132 Cal. 677, 64 Pac. 1065.

See *post*, c. 7, §§ 154, 176.

Provision of Oregon Act, establishing Railroad Commission (Special Laws 1903, § 73, par. 71), authorizes a city to prescribe rates for transportation of passengers or property within its limits, and the provision (Laws 1907, p. 70, § 11) that the act regulating carriers shall not apply to transportation of passengers carried wholly within cities by state and other railroads does not prohibit Railroad Commission from regulating rates on traffic originating or extending beyond the boundary of such a city (the city of Portland). Portland R. L. & P. Co. v. Railroad Commission, 56 Or. 468, 109 Pac. 273.

As to whether statute includes a street railroad, see Kinsey v. Union Traction Co., 169 Ind. 601, 81 N. E. 922; Funk v. St. Paul City R. Co., 61 Minn. 435, 63 N. W. 1099, 52 Am. St. Rep. 608, 29 L. R. A. 208; Riley v. Galveston City R. Co., 13 Tex. Civ. App. 247, 35 S. W. 826; Sams v. St. Louis & M. River R. Co., 174 Mo. 53, 73 S. W. 686, 61 L. R. A. 475; Lincoln Street R. Co. v. McClellan, 54 Neb. 672, 74 N. W. 1074, 69 Am. St. Rep. 736; Railroad Commrs. v. Market Street R. Co., 132 Cal. 677, 64 Pac. 1065; Front Street Cable R. Co. v. Johnson (1891), 2 Wash. 112, 25 Pac. 1084, 11 L. R. A. 603; Fidelity Loan & T. Co. v. Douglas, 104 Iowa, 532, 73 N. W. 1039.

Held, not to be included within Interstate Commerce Act. Omaha & C. B. Street R. Co. v. International Commerce Commission, 179 Fed. 243, citing Louisville & P. R. C. v. Louisville City R. Co., 63 Ky. (2 Duv.) 175, 178; Funk v. S. Paul R. Co., 61 Minn. 435, 437, 441, 63 N. W.

§ 91. **"Street Railroad Corporations."**—The term "street railroad corporation," when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any street railroad for compensation within this state.[8]

§ 92. **"Railroad."**—The term "railroad," when used in this act, includes every commercial, interurban and other railway other than a street railroad, and each and every branch or extension thereof, by whatsoever power operated, together with all tracks, bridges, trestles, rights of way, subways, tunnels, stations, depots, union depots, ferries, yards, grounds, terminals, terminal facilities, structures and equipment, and all other real estate, fixtures and personal property of every kind used in connection therewith, owned, controlled, operated or managed for public use in the transportation of persons or property.[9]

1099, 52 Am. St. Rep. 608, 29 L. R. A. 208; State v. Duluth, G. & W. Co., 76 Minn. 96, 108, 78 N. W. 1032, 57 L. R. A. 63; Manhattan & Co. v. Sioux City Cable R. Co., 68 Fed. 82, 86; Railroad Commission v. Market Street R. Co., 132 Cal. 677–679, 682, 683, 64 Pac. 1065; Gyger v. West Philadelphia R. Co., 136 Pa. 96, 108, 20 Atl. 399; State v. Grant Cain, 69 Kan. 186, 189, 190, 76 Pac. 443; Kansas City, O. P. & El. R. Co. v. Railroad Commission, 73 Kan. 168, 169, 173, 84 Pac. 755; Sams v. St. Louis & M. R. Co., 174 Mo. 53, 64, 69, 74–77, 81, 73 S. W. 686, 61 L. R. A. 475; Thomas & Houston El. Co. v. Simon, 20 Or. 60, 75, 25 Pac. 147, 149, 23 Am. St. Rep. 86, 10 L. R. A. 251; Front St. Cable R. Co. v. Johnson, 2 Wash. 112, 25 Pac. 1084, 11 L. R. A. 696; Riley v. Galveston City R. Co., 13 Tex. Civ. App. 247, 35 S. W. 826.

[8] Section 2 (h), p. 19.

[9] Section 2 (i), p. 19.

What embraced in term "railroad"—what transportation governed by act (Or. Laws 1907, c. 53, p. 71, § 11).

"Railroad," as used in Oregon Act (Laws 1907, p. 70, c. 53, § 11), includes all corporations which operate by electric power—any inter-

§ 93. "Railroad Corporation."—The term "railroad corporation," when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever,

urban railroad. Portland R. L. & P. Co. v. Railroad Commission, 56 Or. 468, 105 Pac. 709.

"Railroad," as used in the Wisconsin Act, is therein defined, and a provision that every railroad is required to furnish reasonable adequate service and facilities and that the charge made for any services rendered or to be rendered in the transportation of persons or property or for any service in connection therewith or for the receiving, switching, delivering, storing or handling of such property, shall be reasonable and just, and an unjust or unreasonable charge for such service is prohibited and declared to be unlawful. Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 915.

"Railroad," as generally used, applies to commercial railways engaged in the transportation of freight and passengers for long distances and, as a general rule, having steam engines for motive power and making stops at regular stations for the receipt and discharge of freight and passengers. Bloxham v. Consumers' Elec. Light Co., 36 Fla. 539, 18 So. 444, 51 Am. St. Rep. 44.

"Railroad" does not include railway. See Gyger v. West Phila. City P. Ry. Co., 136 Pa. 96, 20 Atl. 399. See Louisville & N. R. Co. v. Louisville St. R. Co., 100 Ky. 690, 19 Ky. Law Rep. 11, 39 S. W. 42; Bloxham v. Consumers' Elec. Light Co., 36 Fla. 539, 18 So. 444, 51 Am. St. Rep. 44.

"Railroad," as used in section 10, article XIII, of the California Constitution, construed not to include street railroads. S. F. & S. M. El. R. Co. v. Scott, 142 Cal. 222, 75 Pac. 575.

"Railroad" and "railway" may undoubtedly be used so as to mean a street railway, but by popular usage, when used without qualifying words, they are understood to refer to commercial railways, the word "street" being almost invariably used in connection with railway to designate a street railway. Fidelity L. & T. Co. v. Douglas, 104 Iowa, 532, 73 N. W. 1039; Funk v. St. Paul City R. Co., 61 Minn. 435, 63 N. W. 1099, 52 Am. St. Rep. 608; Sears v. Marshalltown St. R. Co., 65 Iowa, 742, 23 N. W. 150; Front St. Cable R. Co. v. Johnson, 2 Wash. 112, 25 Pac. 1084; Manhattan Trust Co. v. Sioux City Cable Co., 68 Fed. 82; Mass. L. & T. Co. v. Hamilton, 88 Fed. 588.

"Railroads," if to be extended so as to include street railroads, it is not because of the intention of those who formed and adopted the constitution to give the word that meaning, but because of the rule of law that where a provision is made by law for a certain class of subjects, and thereafter a new but similar subject is created, coming within the general description, and within the particular purpose and object of

owning, controlling, operating or managing any railroad for compensation within this state.[10]

§ 94. "Express Corporation."—The term "express corporation," when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, engaged in or transacting the business of transporting any freight, merchandise or other property for compensation on the line of any common carrier or stage or auto stage line within this state.[11]

§ 95. "Common Carrier."—The term "common carrier," when used in this act, includes every railroad corporation; street railroad corporation; express corporation; dispatch, sleeping-car, dining-car, drawing-room car, freight, freight line, refrigerator, oil, stock, fruit, car loaning, car renting, car loading and every other car corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, operating for compensation within this

the law, it is to be construed as having been intended to be included in the original description. San Francisco & S. M. El. Co. v. Scott, 142 Cal. 222, 75 Pac. 575.

"Facilities," as applied to railroads, means everything necessary for the convenience of passengers and patrons and the safety and prompt transportation of passengers and freight. See Chicago R. I. & P. R. Co. v. State, 23 Okl. 94, 99 Pac. 901; 19 Cyc. 109.

"Public" has two proper meanings: a thing may be said to be public when owned by the public, and also when its uses are public. County of Hennepin v. Brotherhood of Gethsemane, 27 Minn. 460, 8 N. W. 595.

"Public facility" or "public convenience," as to, see 32 Cyc. 748.

[10] Section 2 (j), p. 19.

[11] Section 2 (k), p. 19.

Carriage of express matter from one point within the state to another point within the state does not constitute interstate commerce. See State v. United States Express Co. (Minn.), 131 N. W. 489. See, also, *ante*, c. 3, § 70.

When expressage crosses the state line and again re-enters the state in traveling between points located within the state, the rule is otherwise. See c. 3, § 79 et seq.

state; and every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any vessel regularly engaged in the transportation of persons or property for compensation upon the waters of this state or upon the high seas, over regular routes between points within this state.[12]

§ 96. "Pipe-line."—The term "pipe-line," when used in this act, includes all real estate, fixtures and personal property, owned, controlled, operated or managed in connection with or to facilitate the transmission, storage, distribution or delivery of crude oil or other fluid substances except water through pipelines.[13]

§ 97. "Pipe-line Corporation."—The term "pipeline corporation," when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any pipe-line for compensation within this state.[14]

§ 98. "Gas Plant."—The term "gas plant," when used in this act, includes all real estate, fixtures and personal property, owned, controlled, operated or managed in connection with or to facilitate the production, generation, transmission, delivery or furnishing of gas (natural or manufactured) for light, heat or power.[15]

§ 99. "Gas Corporation."—The term "gas corporation," when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning,

[12] Section 2 (l), p. 19.
[13] Section 2 (m), p. 20.
[14] Section 2 (n), p. 20.
[15] Section 2 (o), p. 20.

controlling, operating or managing any gas plant for compensation within this state, except where gas is made or produced on and distributed by the maker or producer through private property alone solely for his own use or the use of his tenants and not for sale to others.[16]

§ 100. **"Electric Plant."** — The term "electric plant," when used in this act, includes all real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate the production, generation, transmission, delivery or furnishing of electricity for light, heat or power, and all conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power.[17]

§ 101. **"Electrical Corporation."**—The term "electrical corporation," when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any electric plant for compensation within this state, except where electricity is generated on or distributed by the producer through private property alone solely for his own use or the use of his tenants and not for sale to others.[18]

§ 102. **"Telephone Line."**—The term "telephone line," when used in this act, includes all conduits, ducts, poles, wires, cables, instruments and appliances, and all other real estate, fixtures and personal property owned, controlled, operated or managed in con-

[16] Section 2 (p), p. 20.
[17] Section 2 (q), p. 20.
[18] Section 2 (r), p. 20.

nection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires.[19]

§ 103. **"Telephone Corporation."**—The term "telephone corporation," when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any telephone line for compensation within this state.[20]

§ 104. **"Telegraph Line."**—The term "telegraph line," when used in this act, includes all conduits, ducts, poles, wires, cables, instruments and appliances, and all other real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate communication by telegraph, whether such communication is had with or without the use of transmission wires.[21]

§ 105. **"Telegraph Corporation."**—The term "telegraph corporation," when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any telegraph line for compensation within this state.[22]

§ 106. **"Water System."**—The term "water system," when used in this act, includes all reservoirs, tunnels, shafts, dams, dikes, headgates, pipes, flumes, canals, structures and appliances, and all other real estate, fixtures and personal property, owned, controlled, operated or managed in connection with or to facilitate the diversion, development, storage, supply,

[19] Section 2 (s), p. 21.
[20] Section 2 (t), p. 21.
[21] Section 2 (u), p. 21.
[22] Section 2 (v), p. 21.

distribution, sale, furnishing, carriage, apportionment or measurement of water for power, irrigation, reclamation or manufacturing, or for municipal, domestic or other beneficial use.[23]

§ 107. "**Water Corporation.**"—The term "water corporation," when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any water system for compensation within this state.[24]

§ 108. "**Vessel.**"—The term "vessel," when used in this act, includes every species of water-craft, by whatsoever power operated, which is owned, controlled, operated or managed for public use in the transportation of persons or property.[25]

§ 109. "**Wharfinger.**"—The term "wharfinger," when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees, appointed by any court whatsoever, owning, controlling, operating or managing any dock, wharf or structure used by vessels in connection with or to facilitate the receipt or discharge of freight or passengers for compensation within this state.[26]

§ 110. "**Warehouseman.**"—The term "warehouseman," when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever owning, controlling, operating or managing any building or structure in which property is regularly stored for compensation within this state, in connection with or

[23] Section 2 (w), p. 21.
[24] Section 2 (x), p. 21.
[25] Section 2 (y), p. 21.
[26] Section 2 (z), p. 21.

to facilitate the transportation of property by a common carrier or vessel, or the loading or unloading of the same, other than a dock, wharf or structure, owned, operated, controlled or managed by a wharfinger.[27]

§ 111. "Public Utilities."—The term "public utility," when used in this act, includes every common carrier, pipe-line corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, wharfinger and warehouseman, as those terms are defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this act.[28]

[27] Section 2 (aa), p. 21.

[28] Section 2 (bb), p. 22.

"Public utilities," as used in article XII of the freeholders' charter of the city and county of San Francisco, entitled, "Acquisition of Public Utilities," as amended in 1903, does not include the words "street railroads," yet its provisions, as amended by the addition of section 14 thereof, in 1907, are comprehensive enough to include the "street railroads." Platt v. San Francisco, 158 Cal. 74, 110 Pac. 304.

CHAPTER VI.

RAILROAD COMMISSION—GENERAL PROVISIONS.

§ 112. Appointment of Commissioners.
§ 113. —— Term of Office.
§ 114. —— President of Commission—Election of.
§ 115. —— Vacancies—Filling of.
§ 116. —— Removal of Commissioners—Grounds for.
§ 117. Attorney to the Commission—Appointment of.
§ 118. —— Duties of Attorney to Commission.
§ 119. Secretary to the Commission—Appointment and Term of Office.
§ 120. —— Duties of Secretary to Commission.
§ 121. Assistant Secretary—Powers and Duties of.
§ 122. Additional Officers and Employees.
§ 123. Oath of Office of Commissioners, Appointees, etc.
§ 124. Qualification and Eligibility of Commissioners, Appointees and Employees.
§ 125. General Office of Commission—In San Francisco.
§ 126. —— Open When.
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§ 129. Session of Commission, Public.
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§ 131. Supplies and Equipment.
§ 132. Quorum of Commission.
§ 133. —— Vacancy not to Impair Powers.
§ 134. Majority to Act—One may Investigate.
§ 135. Salaries—Of Commissioners.
§ 136. —— Of Officers and Employees.
§ 137. —— Of Civil Executive Officer.
§ 138. —— Of Other Persons and Employees.
§ 139. Expenses of Commission.
§ 140. Free Transportation of Commissioners and Employees.
§ 141. Annual Report of Commission.

§ 112. Appointment of Commissioners.—The Railroad Commission shall consist of five members, who shall be appointed by the governor from the state at large; *provided*, that the three commissioners in office on the tenth day of October, nineteen hundred and eleven, shall serve out the term for which they were elected, and that two additional commissioners shall

be appointed by the governor to hold office during the same term.[1]

§ 113. —— Term of Office.—Upon the expiration of said term, the term of office of each commissioner thereafter shall be six years, excepting that of the commissioners first appointed after the expiration of said term one shall be appointed to hold office until the first day of January, nineteen hundred and seventeen, two until the first day of January, nineteen hundred and nineteen, and two until the first day of January, nineteen hundred and twenty-one.[2]

§ 114. —— President of Commission—Election of. The commissioners shall elect one of their number president of the Commission.[3]

§ 115. —— Vacancies — Filling of.—Whenever a vacancy in the office of commissioner shall occur, the governor shall forthwith appoint a qualified person to fill the same for the unexpired term.[4]

§ 116. —— Removal of Commissioners—Grounds for.—The legislature, by a two-thirds vote of all members elected to each house, may remove any one or more of said commissioners from office for dereliction of duty or corruption or incompetency.[5]

§ 117. Attorney to the Commission—Appointment of.—The Commission shall have power to appoint as attorney to the Commission an attorney at law of this state, who shall hold office during the pleasure of the Commission.[6]

[1] Extraordinary Session 1911, c. 14, § 3 (a), p. 22.
[2] Ib.
[3] Ib.
[4] Section 3 (b).
[5] Ib.
[6] Section 4.

§ 118. —— Duties of Attorney to Commission.— It shall be the right and the duty of the attorney to represent and appear for the people of the state of California and the Commission in all actions and proceedings involving any question under this act or under any order or act of the Commission, and, if directed to do so by the Commission, to intervene, if possible, in any action or proceeding in which any such question is involved; to commence, prosecute and expedite the final determination of all actions and proceedings directed or authorized by the Commission; to advise the Commission and each commissioner, when so requested, in regard to all matters in connection with the powers and duties of the Commission and the members thereof; and generally to perform all duties and services as attorney to the Commission which the Commission may require of him.[7]

§ 119. Secretary to the Commission—Appointment and Term of Office.—The Commission shall appoint a secretary, who shall hold office during its pleasure.[8]

§ 120. —— Duties of Secretary to Commission.— It shall be the duty of the secretary to keep a full and true record of all proceedings of the Commission, to issue all necessary process, writs, warrants and notices, and to perform such other duties as the Commission may prescribe.[9]

§ 121. Assistant Secretary—Powers and Duties of. The Commission may appoint an assistant secretary, who shall have all the powers conferred by law upon peace officers to carry weapons, make arrests and serve

[7] Ib.
[8] Section 5, p. 22.
[9] Section 5, p. 23.

warrants and other process in any county or city and county of this state.[10]

§ 122. Additional Officers and Employees.—The Commission shall have power to employ, during its pleasure, such officers, experts, engineers, statisticians, accountants, inspectors, clerks and employees as it may deem necessary to carry out the provisions of this act or to perform the duties and exercise the powers conferred by law upon the Commission.[11]

§ 123. Oath of Office of Commissioners, Appointees, etc.—Each commissioner and each person appointed to a civil executive office by the Commission shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office.[12]

§ 124. Qualification and Eligibility of Commissioners, Appointees and Employees.—Each commissioner shall be a qualified elector of this state, and no person in the employ of or holding any official relation to any corporation or person, which said corporation or person is subject in whole or in part to regulation by the Commission, and no person owning stocks or bonds of any such corporation or who is in any manner pecuniarily interested therein shall be appointed to or hold the office of commissioner or be appointed or employed by the Commission; *provided*, that if any such person shall become the owner of such stocks or bonds or become pecuniarily interested in such corporation otherwise than voluntarily, he shall within a reasonable time devest himself of such ownership or interest;

[10] Ib.

[11] Section 6.

[12] Section 7.

failing to do so, his office or employment shall become vacant.[13]

§ 125. **General Office of Commission—In San Francisco.**—The office of the Commission shall be in the city and county of San Francisco.[14]

§ 126. —— **Open When.**—The office shall always be open, legal holidays and nonjudicial days excepted.[15]

§ 127. —— **Session of Commission at.**—The Commission shall hold its sessions at least once in each calendar month in said city and county of San Francisco, and may also meet at such other times and in such other places as may be expedient and necessary for the proper performance of its duties.[16]

§ 128. **Other Offices of Commission.**—For the purpose of holding sessions in places other than the city and county of San Francisco, the Commission shall have power to rent quarters or offices, and the expense thereof and in connection therewith shall be paid in the same manner as other expenses authorized by this act.[17]

§ 129. **Session of Commission, Public.**—The sessions of the Commission shall be public.[18]

§ 130. **Official Seal of Commission—Judicial Notice.**—The Commission shall have a seal, bearing the following inscription: "Railroad Commission State

[13] Ib.

Qualifications of Commission prescribed by statute. In re Opinion of Justices, 75 N. H. 613, 72 Atl. 754; State v. Gulf R. Co., 55 Tex. Civ. App. 108, 118 S. W. 730, 736.

[14] Section 8 (a), p. 23.

[15] Ib.

[16] Ib.

[17] Ib.

[18] Ib.

of California." The seal shall be affixed to all writs and authentications of copies of records and to such other instruments as the Commission shall direct. All courts shall take judicial notice of said seal.[19]

§ 131. **Supplies and Equipment.**—The Commission is authorized to procure all necessary books, maps, charts, stationery, instruments, office furniture, apparatus and appliances, and the same shall be paid for in the same manner as other expenses authorized by this act.[20]

§ 132. **Quorum of Commission.**—A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty or for the exercise of any power of the Commission.[21]

§ 133. —— **Vacancy not to Impair Powers.**—No vacancy in the Commission shall impair the right of the remaining commissioners to exercise all the powers of the Commission.[22]

§ 134. **Majority to Act—One may Investigate.**—The act of a majority of the commissioners when in session as a board shall be deemed to be the act of the Commission: but any investigation, inquiry or hearing which the Commission has power to undertake or to hold may be undertaken or held by or before any commissioner designated for the purpose by the Commission, and every finding, order or decision made by a commissioner so designated, pursuant to such investigation, inquiry or hearing, when approved and confirmed by the Commission and ordered filed in its office,

[19] Section 8 (b).
[20] Section 8 (c).
[21] Section 9, p. 24.
[22] Ib.

shall be and be deemed to be the finding, order or decision of the Commission.[23]

§ 135. **Salaries — Of Commissioners.**—The annual salary of each commissioner shall be six thousand dollars.[24]

§ 136. —— **Of Officers and Employees.**—All officers, experts, engineers, statisticians, accountants, inspectors, clerks and employees of the Commission shall receive such compensation as may be fixed by the Commission.[25]

§ 137. —— **Of Civil Executive Officers.**—The commissioners, attorney, secretary, rate expert and assistant secretary shall be civil executive officers and their salaries as fixed by law or the Commission shall be paid in the same manner as are the salaries of other state officers.[26]

§ 138. —— **Of Other Persons and Employees.**—The salary or compensation of every other person holding office or employment under the Commission shall be paid monthly from the funds appropriated for the use of the Commission, after being approved by the Commission, upon claims therefor to be audited by the board of control.[27]

§ 139. **Expenses of Commission.**—All expenses incurred by the Commission pursuant to the provisions of this act, including the actual and necessary traveling and other expenses and disbursements of the commissioners, their officers and employees, incurred while

[23] Ib.
[24] Section 10 (a).
[25] Ib.
[26] Ib.
[27] Ib.

on business of the Commission, shall be paid from the funds apropriated for the use of the Commission, after being approved by the Commission, upon claims therefor to be audited by the board of control.[28]

§ 140. Free Transportation of Commissioners and Employees.—The commissioners and the officers and employees of the Commission, shall, when in the performance of their official duties, have the right to pass, free of charge, on all railroads, cars, vessels and other vehicles of every common carrier, as said term is defined in this act, subject in whole or in part to control or regulation by the Commission, between points within this state, and such persons shall not be denied the right to travel upon any railroad, car, vessel or other vehicle of such common carrier, whether such railroad, car, vessel or other vehicle be used for the transportation of passengers or freight, and regardless of its class.[29]

§ 141. Annual Report of Commission.—The Commission shall make and submit to the governor on or before the first day of December of each year subsequent to the year nineteen hundred and twelve, a report containing a full and complete account of its transactions and proceedings for the preceding fiscal year, together with such other facts, suggestions, and recommendations as it may deem of value to the people of the state.[30]

[28] Section 10 (b).
[29] Section 11.
[30] Section 12.

CHAPTER VII.

DUTIES OF PUBLIC UTILITIES.

§ 142. Charges to be Just and Reasonable.
§ 143. —— Unjust Charge Unlawful.
§ 144. Services and Facilities.
§ 145. Rules and Regulations.
§ 146. Tariff Schedule—Filing and Public Inspection of.
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§ 150. —— Notice in—Contents of—Posting.
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§ 164. —— Rebates and Privileges Prohibited.
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§ 173. Interstate Traffic—Filing Schedule of.
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§ 177. Profiting from Economics, etc.—Dividends.
§ 178. Sliding Scale of Charges—Schedule.
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§ 180. Commission may Revoke Schedule and Fix Other Charge.
§ 181. Discrimination Between Utilities *Inter se* Prohibited.
§ 182. —— Connecting Line, Duty to Receive and Haul Cars as Billed.
§ 183. —— Duty to Make Joint Rates, and Power of Commission is not Affected.
§ 184. —— Duty of Telegraph and Telephone Lines to Receive and Transmit.
§ 185. False Billing, etc., by Carrier or Shipper Prohibited.
§ 186. —— Less Rates by Means of Prohibited.
§ 187. —— False Claim for Damages, and Rebates, etc., by Means of Prohibited.
§ 188. Long and Short Hauls and Services.
§ 189. —— Change or Modification of Rates, etc., by Commission.
§ 190. —— Telegraph and Telephone Corporations Governed by.
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§ 192. Switch and Spur Connections.
§ 193. —— Duty to Construct, and to Receive and Deliver Freight.
§ 194. Foreign Public Utilities Excluded.
§ 195. Street and Interurban Railroad—Fares on.
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§ 197. Information and Details to be Furnished—Tabulation, etc.
§ 198. —— Filling Out Blanks—Reason for Failure to be Given.
§ 199. —— Delivering Copies of Maps, Profiles, etc.—Inventory of Property.
§ 200. —— To be Kept Private.
§ 201. —— Misdemeanor to Divulge.
§ 202. Annual Report of Public Utilities.
§ 203. —— To be Made Under Oath.
§ 204. Compliance with Commission's Orders.

§ 142. Charges to be Just and Reasonable.—All charges made, demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable.[1]

[1] Extraordinary Session 1911, c. 14, § 13 (a), p. 25.

At common law common carriers are obliged to receive and carry all goods offered for transportation upon receiving a reasonable hire therefor. Messenger v. Pennsylvania R. Co., 36 N. J. L. 407; Express Co. v. Maine Cent. R. Co., 57 Me. 188.

In absence of any action by the Railroad Commission, a railroad may fix rates, but not abuse the maximum provided by the act. Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 915.

Discretionary power of railroad company in operating passenger trains for the accommodation of the public is subject always to the condition

§ 143. —— Unjust Charge Unlawful.—Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful.[2]

§ 144. Services and Facilities.—Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, efficient, just and reasonable.[3]

that there is no statutory provision limiting and restricting such power, and that its exercise is in opposition to the terms of the charter. The discretion is further subject to the condition that it must be exercised in good faith and with a due regard to the necessities and convenience of the public. People v. St. L., A. & T. H. R. Co., 176 Ill. 512, 52 N. E. 292, 35 L. R. A. 656; State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 495, 92 Pac. 606. See People ex rel. Hunt v. Chicago & A. R. Co., 130 Ill. 175, 22 N. E. 857; Missouri, O. & R. Co. v. People, 132 Ill. 559, 24 N. E. 643, 22 Am. St. Rep. 556; Railroad Connection Cases, 137 N. C. 1, 49 S. E. 191, 115 Am. St. Rep. 636.

[2] Section 13 (a), p. 25.

[3] Section 13 (b).

Right of carrier to separate white and negro interstate passengers, in the absence of commission legislation. See Chiles v. Chesapeake & O. R. Co., 218 U. S. 71, 30 Sup. Ct. 667, 54 L. ed. 936; Bowie v. Birmingham R. & El. Co., 125 Ala. 397, 27 So. 1016, 82 Am. St Rep. 247, 50 L. R. A. 632; Bradford v. St. Louis, I. M. & S. R. Co., 93 Ark. 244, 124 S. W. 516; Ohio V. R. Co. v. Lander, 104 Ky. 431, 47 S. W. 344, 882; Chilton v. St. Louis & I. M. R. Co., 114 Mo. 88, 21 S. W. 457, 19 L. R. A. 269; Britton v. Atlantic Airline R. Co., 88 N. C. 536; West Chester & P. R. Co. v. Miles, 55 Pa. 209, 93 Am. Dec. 744; Smith v. Chamberlain, 38 S. C. 529, 17 S. E. 371, 19 L. R. A. 710; Chesapeake, O. & S. W. R. Co. v. Wells, 85 Tenn. 613, 4 S. W. 5.

But rules regarding such separation must not subject negro passengers to unjust discrimination or require them to accept unequal accommodations. Chicago & N. W. R. Co. v. Williams, 55 Ill. 185, 8 Am. Rep. 641; Coger v. North West U. P. Co., 37 Iowa, 154.

Carrier's duties discharged by running a mixed train, and an order of the state Commission compelling separate train service at a loss to the carrier, is so arbitrary and unreasonable as to amount to the taking of property without due process of law. Missouri Pac. R. Co. v. Kansas, 216 U. S. 262, 30 Sup. Ct. 33, 54 L. ed. 472.

"A state may furnish such facilities or direct them to be furnished by persons or corporations within its limits without violating the federal

§ 145. Rules and Regulations.—All rules and regulations made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable.[4]

§ 146. Tariff Schedule—Filing and Public Inspection of.—Every common carrier shall file with the Commission and shall print and keep open to the public inspection schedules showing the rates, fares, charges and classifications for the transportation between termini within this state of persons and property from each point upon its route to all other points thereon; and from each point upon its route to all points upon every other route leased, operated or controlled by it; and from each point on its route or upon any route leased, operated or controlled by it to all points upon the route of any other common carrier, whenever a through route and a joint rate shall have been established or ordered between any two such points.[5]

§ 147. —— Joint Rate Over Through Route.—If no joint rate over a through route has been established, the schedules of the several carriers in such through route shall show the separately established rates, fares, charges and classifications applicable to the through transportation.[6]

§ 148. —— Shall State What.—The schedules printed as aforesaid shall plainly state the places between which property and persons will be carried, and shall also contain the classification of passengers or property in force, and shall also state separately all terminal charges, storage charges, icing charges and

constitution." Wisconsin, M. & P. R. Co. v. Jacobson, 197 U. S. 287, 21 Sup. Ct. 115, 45 L. ed. 194.

[4] Section 13 (c), p. 25.

[5] Section 14 (a).

[6] Ib.

all other charges which the Commission may require to be stated, all privileges or facilities granted or allowed, and all rules or regulations which may in any wise change, affect or determine any part, or the aggregate of, such rates, fares, charges and classifications, or the value of the service rendered to the passenger, shipper or consignee.[7]

§ 149. —— How Printed—Copies How Kept and Produced.—Subject to such rules and regulations as the Commission may prescribe, such schedules shall be plainly printed in large type, and a copy thereof shall be kept by every such carrier readily accessible to and for inspection by the public in every station or office of such carrier where passengers or property are respectively received for transportation, when such station or office is in charge of an agent, and in every station or office of such carrier where passenger tickets or tickets for sleeping, parlor car or other train accommodations are sold or bills of lading or waybills or receipts for property are issued. Any or all of such schedules kept as aforesaid shall be immediately produced by such carrier for inspection upon the demand of any person.[8]

§ 150. —— Notice in — Contents of — Posting.— A notice printed in bold type and stating that such schedules are on file with the agent and open to inspection by any person, and that the agent will assist any person to determine from such schedules any rates, fares, rules or regulations in force, shall be kept posted by the carrier in two public and conspicuous places in every such station or office.[9]

[7] Ib.
[8] Ib.
[9] Ib., p 26.

§ 151. —— Form of to be Prescribed by Commission.—The form of every such schedule shall be prescribed by the Commission and shall conform in the case of common carriers subject to the act of Congress entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and the acts amendatory thereof and supplementary thereto, as nearly as may be to the form of schedules prescribed by the Interstate Commerce Commission under said act.[10]

§ 152. —— Who to File With Commission.—Under such rules and regulations as the Commission may prescribe, every public utility other than a common carrier shall file with the Commission within such time and in such form as the Commission may designate, and shall print and keep open to public inspection schedules showing all rates, tolls, rentals, charges and classifications collected or enforced, or to be collected or enforced, together with all rules, regulations, contracts, privileges and facilities which in any manner affect or relate to rates, tolls, rentals, classifications, or service.[11]

§ 153. —— Limitation of Rates, Tolls, Rentals and Charges.—The rates, tolls, rentals and charges shown on such schedules when filed by a public utility as to which the Commission by this act acquires the power to fix any rates, tolls, rentals or charges, shall not, within any portion of the territory as to which the Commission acquires as to such public utility such power, exceed the rates, tolls, rentals or charges in effect on the tenth day of October, nineteen hundred and eleven; the rates, tolls, rentals and charges shown on such schedules, when filed by any public utility as

[10] Ib.

[11] Section 14 (b).

to any territory as to which the Commission does not by this act acquire as to such public utility such power, shall not exceed the rates, tolls, rentals and charges in effect at the time the Commission acquires as to such territory and as to such public utility the power to fix rates, tolls, rentals or charges.[12]

§ 154. —— Power of Commission to Approve or Fix, etc.—Nothing in this section contained shall prevent the Commission from approving or fixing rates, tolls, rentals or charges, from time to time, in excess of or less than those shown by said schedules.[13]

§ 155. —— Power of Commission to Change Form of Schedule of Rates.—The Commission shall have power, from time to time, in its discretion, to determine and prescribe by order such changes in the form of the schedules referred to in this section as it may find expedient, and to modify the requirements of any of its orders, rules or regulations in respect to any matter in this section referred to.[14]

§ 156. Changes in Schedule—Notice.—Unless the Commission otherwise orders, no change shall be made by any public utility in any rate, fare, toll, rental, charge or classification, or in any rule, regulation or contract relating to or affecting any rate, fare, toll, rental, charge, classification or service, or in any privilege or facility, except after thirty days' notice to the Commission and to the public as herein provided.[15]

[12] Ib.

[13] Ib.

Commission has no power over state railway corporations within a municipality. Board of Railroad Commrs. v. Market Street R. Co., 132 Cal. 677, 64 Pac. 1065.

See, also, chapter 5, authorities cited in footnote 7.

[14] Section 14 (c), p. 26.

[15] Section 15.

§ 157. —— Notice, How Given.—Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force, and the time when the change or changes will go into effect.[16]

§ 158. —— Commission may Allow Change Without the Notice.—The Commission, for good cause shown, may allow changes without requiring the thirty days' notice herein provided for, by an order specifying the changes so to be made and the time when they shall take effect, and the manner in which they shall be filed and published.[17]

§ 159. —— Increase of Rate—Notice Directed to How.—When any change is proposed in any rate, fare, toll, rental, charge or classification, or in any form of contract or agreement or in any rule, regulation or contract relating to or affecting any rate, fare, toll, rental, charge, classification or service, or in any privilege or facility, attention shall be directed to such change on the schedule filed with the Commission, by some character to be designated by the Commission, immediately preceding or following the item.[18]

§ 160. Joint Tariff, etc.—Names of Parties to be Set Out.—The names of the several public utilities which are parties to any joint tariff, rate, fare, toll, contract, classification or charge shall be specified in the schedule or schedules showing the same.[19]

§ 161. —— Filing by One Party, Concurrence by Others.—Unless otherwise ordered by the Commission,

[16] Ib., p. 27.
[17] Ib.
[18] Ib.
[19] Section 16, p. 27.

a schedule showing such joint tariff, rate, fare, toll, contract, classification or charge need be filed with the Commission by only one of the parties to it; provided, that there is also filed with the Commission in such form as the Commission may require a concurrence in such joint tariff, rate, fare, toll, contract, classification or charge by each of the other parties thereto.[20]

§ 162. Schedule of Rates, etc.—Filing and Publishing.—No common carrier subject to the provisions of this act shall engage or participate in the transportation of persons or property, between points within this state, until its schedules of rates, fares, charges and classifications shall have been filed and published in accordance with the provisions of this act.[21]

§ 163. —— Carriers Shall not Change.—No common carrier shall charge, demand, collect or receive a greater or less or different compensation for the transportation of persons or property, or for any service in connection therewith, than the rates, fares and charges applicable to such transportation as specified in its schedules filed and in effect at the time.[22]

§ 164. —— Rebates and Privileges Prohibited.—Nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares or charges so specified, except upon order of the Commission as hereinafter provided, nor extend to any corporation or person any privilege or facility in the transportation of passengers or property except such as are regularly and uniformly extended to all corporations and persons.[23]

[20] Ib.
[21] Section 17 (a) 1, p. 27.
[22] Section 17 (a) 2, p. 27.
[23] Ib.

§ 165. —— Free Passes and Reductions Prohibited—Exceptions.—No common carrier subject to the provisions of this act shall, directly or indirectly, issue, give or tender any free ticket, free pass or free or reduced rate transportation for passengers between points within this state, except to its officers, agents, employees, attorneys, physicians and surgeons, and members of their families; to ministers of religion, traveling secretaries of railroad men's religious associations, or executive officers, organizers or agents of railroad employees' mutual benefit associations giving the greater portion of their time to the work of any such association; inmates of hospitals or charitable or eleemosynary institutions, and persons exclusively engaged in charitable or eleemosynary work, and persons and property engaged or employed in educational work or scientific research when permitted by the Commission; to the executive officers of mercantile or promotion boards or bodies within this state when traveling in the performance of duties affecting the advancement of the business of such boards or bodies, or the development of trade or industry within or without this state, when authorized by the Commission; to hotel employees of season resort hotels, when authorized by the Commission; to indigent, destitute and homeless persons and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the national homes or state homes for disabled volunteer soldiers and of soldiers' and sailors' homes, including those about to enter and those returning home after discharge; to necessary caretakers, going and returning, of livestock, poultry, milk, fruit and other freight, under uniform and nondiscriminatory regulations; to employees of sleeping-car corporations, express corporations and telegraph and telephone corporations; to railway mail service em-

ployees, United States internal revenue officers, post-office inspectors, customs officers and inspectors and immigration inspectors when traveling in the course of their official duty; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the carrier is interested, persons injured in accidents or wrecks and physicians and nurses attending such persons; provided, that the term "employees," as used in this section, shall include furloughed, pensioned and superannuated employees, persons who have become disabled or infirm in the service of any such carrier, ex-employees traveling for the purpose of entering the service of any such carrier, and the remains of persons dying while in the employment of any such carrier; and the term "families," as used in this section, shall include the families of those persons heretofore named in this proviso, the families of persons killed, and the widows during widowhood and minor children during minority of persons who died while in the service of any such carrier; and provided, further, that no free ticket, free pass or free or reduced rate transportation shall be issued, given or tendered to any officer, agent or employee of a common carrier, who is at the same time a shipper or receiver of freight, or an officer, agent or employee of a shipper or receiver of freight, unless such officer, agent or employee devotes substantially his entire time to the service of such carrier; and provided, further, that the members of the Railroad Commission, their officers and employees, shall be entitled, when in the performance of their official duties, to free transportation over the lines of all common carriers within this state; and provided, further, that passenger transportation may issue to the proprietors and employees of newspapers and magazines and the members of their immediate families, in exchange for advertising space in such newspapers or magazines at full rates, subject how-

ever to such reasonable restrictions as the Commission may impose.[24]

§ 166. —— Free and Reduced Rates by Express Companies.—Nothing in this act contained shall be construed to prohibit the issue by express corporations of free or reduced rate transportation for express matter to their officers, agents, employees, attorneys, physicians and surgeons, and members of their families, or the interchange of free or reduced rate transportation for passengers or express matter between common carriers, their officers, agents, employees, attorneys, physicians and surgeons, and members of their families; provided, that such express matter be for the personal use of the person to or for whom such free or reduced rate transportation is granted, or of his family.[25]

§ 167. —— Passes and Franks by Telegraph and Telephone Company.—Nor to prohibit the issue of passes or franks by telegraph or telephone corporations to their officers, agents, employees, attorneys, physicians and surgeons, and members of their families, or the exchange of passes or franks between such telegraph and telephone corporations or between such corporations and such common carriers, for their officers, agents, employees, attorneys, physicians and surgeons, and members of their families.[26]

§ 168. —— Prior Contract for Free or Reduced Rate Passenger Transportation not Affected.—Nor to prevent the carrying out of contracts for free or reduced rate passenger transportation heretofore made, founded upon adequate consideration and lawful when made; nor to prevent a common carrier from trans-

[24] Section 17 (a) 3, p. 29.
[25] Ib., p. 29.
[26] Ib.

porting, storing or handling, free or at reduced rates, the household goods and personal effects of its employees, of persons entering or leaving its service, and of persons killed or dying while in its service.[27]

§ 169. —— Exceptions as to United States, etc.—Epidemics, Pestilences, etc.—Every common carrier subject to the provisions of this act may transport, free or at reduced rates, persons or property for the United States, state, county or municipal governments, or for charitable purposes, or to provide relief in cases of general epidemic, pestilence or other calamitous visitation, and property to or from fairs or expositions for exhibit thereat; also contractors and their employees, material or supplies for use or engaged in carrying out their contracts with said carriers, for construction, operation or maintenance work or work incidental thereto on the line of the issuing carrier, to the extent only that such free or reduced rate transportation is provided for in the specifications upon which the contract is based and in the contract itself.[28]

§ 170. —— Contract for Exchange of Service.—Common carriers may also enter into contracts with telegraph and telephone corporations for an exchange of service.[29]

§ 171. —— Greater or Less Charge Shall not be Demanded or Collected—Rebating, etc., Prohibited.—Except as in this section otherwise provided, no public utility shall charge, demand, collect or receive a greater or less or different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals and charges applicable to such

[27] Ib.
[28] Section 17 (a) 4, p. 29.
[29] Ib.

product or commodity or service as specified in its schedules on file and in effect at the time, nor shall any such public utility refund or remit, directly or indirectly, in any manner or by any device, any portion of the rates, tolls, rentals and charges so specified, nor extend to any corporation or person any form of contract or agreement or any rule or regulation or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons.[80]

§ 172. —— Exceptions may be Established by Commission.—Provided, that the Commission may by rule or order establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to each public utility.[81]

§ 173. Interstate Traffic — Filing Schedule of.— Every common carrier and every telegraph and telephone corporation shall print and file or cause to be filed with the Commission schedules showing all the rates, fares, tolls, rentals, charges and classifications for the transportation of persons or property or the transmission of messages or conversations between all points within this state and all points without the state upon its route, and between all points within this state and all points without the state upon every route leased, operated or controlled by it, and between all points on its route or upon any route, leased, operated or controlled by it within this state and all points without the state upon the route of any other common carrier or telegraph or telephone corporation, whenever a through route and joint rate shall have been established between any two such points.[82]

[80] Section 17 (b), p. 29.
[81] Ib., p. 30.
[82] Section 18, p. 30.

§ 174. Preferences Prohibited.—No public utility shall, as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage.[33]

§ 175. —— Unreasonable Difference of Rates, etc. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities or in any other respect, either as between localities or as between classes of service.[34]

§ 176. —— Power of Commission as to.—The Commission shall have the power to determine any question of fact arising under this section.[35]

§ 177. Profiting from Economics, etc.—Dividends. Nothing in this act shall be taken to prohibit any public utility from itself profiting, to the extent permitted by the Commission, from any economics, efficiencies or improvements which it may make, and from distributing by way of dividends, or otherwise disposing of, the profits to which it may be so entitled, and the Commission is authorized to make or permit such arrangement or arrangements with any public utility as it may deem wise for the purpose of encouraging economics, efficiencies or improvements and securing to the public utility making the same such portion, if any, of the profits thereof as the Commission may determine.[36]

§ 178. Sliding Scale of Charges—Schedule.—Nothing in this act shall be taken to prohibit a corporation

[33] Section 19, p. 30.
[34] Ib.
[35] Ib.
See footnote, *supra*, § 154.
[36] Section 20, p. 30.

or person engaged in the production, generation, transmission or furnishing of heat, light, water or power, or telegraph or telephone service, from establishing a sliding scale of charges; provided, that a schedule showing such scale of charges shall first have been filed with the Commission and such schedule and each rate set out therein approved by it.[87]

§ 179. Profit Sharing—Scale of Charges.—Nothing in this act shall be taken to prohibit any such corporation or person from entering into an arrangement for a fixed period for the automatic adjustment of charges for heat, light, water or power, or telegraph or telephone service, in relation to the dividends to be paid to stockholders of such corporation, or the profit to be realized by such person; provided, that a schedule showing the scale of charges under such arrangement shall first have been filed with the Commission and such schedule and each rate set out therein approved by it.[88]

§ 180. Commission may Revoke Schedule and Fix Other Charge.—Nothing in this section shall prevent the Commission from revoking its approval at any time and fixing other rates and charges for the product or commodity or service, as authorized by this act.[89]

§ 181. Discrimination Between Utilities Inter Se Prohibited.—Every common carrier shall afford all reasonable, proper and equal facilities for the prompt and efficient interchange and transfer of passengers, tonnage and cars, loaded or empty, between the lines owned, operated, controlled or leased by it and the lines of every other common carrier, and shall make such interchange and transfer promptly without dis-

[87] Section 21, p. 30.
[88] Ib., p. 31.
[89] Ib.

crimination between shippers, passengers or carriers either as to compensation charged, service rendered or facilities afforded.[40]

§ 182. —— Connecting Line, Duty to Receive and Haul Cars as Billed.—Every railroad corporation shall receive from every other railroad corporation, at any point of connection, freight-cars of proper standard and in proper condition, and shall haul the same either to destination, if the destination be upon a line owned, operated or controlled by such railroad corporation, or to point of transfer according to route billed, if the destination be upon the line of some other railroad corporation.[41]

§ 183. —— Duty to Make Joint Rates, and Power of Commission is not Affected.—Nothing in this section contained shall be construed as in anywise limiting or modifying the duty of a common carrier to establish joint rates, fares and charges for the transportation of passengers and property over the lines owned, operated, controlled or leased by it and the lines of other common carriers, nor as in any manner limiting or modifying the power of the Commission to require the establishment of such joint rates, fares and charges.[42]

§ 184. —— Duty of Telegraph and Telephone Lines to Receive and Transmit.—Every telephone corporation and telegraph corporation operating in this state shall receive, transmit and deliver, without discrimination or delay, the conversations and messages of every other telephone or telegraph corporation with whose line a physical connection may have been made.[43]

[40] Section 22 (a), p. 31.
[41] Ib.
[42] Ib.
[43] Section 22 (b), p. 31.

§ 185. False Billing, etc., by Carrier or Shipper Prohibited.—No common carrier, or any officer or agent thereof, or any person acting for or employed by it, shall, by means of known false billing, classification, weight, weighing, or report of weight, or by any other device or means assist, suffer or permit any corporation or person to obtain transportation for any person or property between points within this state at less than the rates and fares then established and in force as shown by the schedules filed and in effect at the time.[44]

§ 186. —— Less Rates by Means of Prohibited.—No person, corporation, or any officer, agent or employee of a corporation shall, by means of false billing, false or incorrect classification, false weight or weighing, false representation as to contents or substance of a package, or false report or statement of weight, or by any other device or means, whether with or without the consent or connivance of a common carrier or any of its officers, agents or employees, seek to obtain or obtain such transportation for such property at less than the rates then established and in force therefor.[45]

§ 187. —— False Claim for Damages, and Rebates, etc., by Means of Prohibited.—No person or corporation, or any officer, agent or employee of a corporation, shall knowingly, directly or indirectly, by any false statement or representation as to cost or value, or the nature or extent of an injury, or by the use of any false billing, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit or deposition, or upon any false, fictitious or fraudulent statement or entry, obtain or attempt to obtain any allowance, re-

[44] Section 23 (a), p. 31.
[45] Ib.

bate or payment for damage, in connection with or growing out of the transportation of persons or property, or an agreement to transport such persons or property, whether with or without the consent or connivance of a common carrier or any of its officers, agents or employees; nor shall any common carrier, or any officer, agent or employee thereof, knowingly pay or offer to pay any such allowance, rebate or claim for damage.[46]

§ 188. **Long and Short Hauls and Services.**—No common carrier subject to the provisions of this act shall charge or receive any greater compensation in the aggregate for the transportation of persons or of a like kind of property for a shorter than for a longer distance over the same line or route in the same direction, within this state, the shorter being included within the longer distance, or charge any greater compensation as a through rate than the aggregate of the intermediate rates; but this shall not be construed as authorizing any such common carrier to charge or receive as great a compensation for a shorter as for a longer distance or haul.[47]

§ 189. —— **Change or Modification of Rates, etc., by Commission.**—Upon application to the Commission, such common carrier may, in special cases, after investigation, be authorized by the Commission to charge less for a longer than for a shorter distance for the transportation of persons or property, and the Commission may from time to time prescribe the extent to which such carrier may be relieved from the operation and requirements of this section.[48]

[46] Section 23 (b), p. 32.
[47] Section 24 (a), p. 32.
[48] Ib.

§ 190. —— Telegraph and Telephone Corporations Governed by.—No telephone or telegraph corporation subject to the provisions of this act shall charge or receive any greater compensation in the aggregate for the transmission of any long distance message or conversation for a shorter than for a longer distance over the same line or route in the same direction, within this state, the shorter being included within the longer distance, or charge any greater compensation for a through service than the aggregate of the intermediate rates or tolls subject to the provisions of this act; but this shall not be construed as authorizing any such telephone or telegraph corporation to charge and receive as great a compensation for a shorter as for a longer distance.[49]

§ 191. —— Change or Modification of Charges by Commission.—Upon application to the Commission, a telephone or telegraph corporation may, in special cases, after investigation, be authorized by the Commission to charge less for a longer than for a shorter distance service for the transmission of messages or conversations, and the Commission may from time to time prescribe the extent to which such telephone or telegraph corporation may be relieved from the operation and requirements of this section.[50]

§ 192. Switch and Spur Connections.—Every railroad corporation, upon the application of any corporation or person, being a shipper or receiver or contemplated shipper or receiver of freight, for a connection between the railroad of such railroad corporation and any existing or contemplated private track, tracks or railroad of such corporation or person, shall make such connection and provide such switches

[49] Section 24 (b), p. 32.
[50] Ib.

and tracks as may be necessary for that purpose and deliver and receive cars thereover; provided, that such connection is reasonably practicable and can be installed and used without materially increasing the hazard of the operation of the railroad with which such connection is sought, and that the business which may reasonably be expected to be received by such railroad corporation over such connection is sufficient to justify the expense of such connection to such railroad corporation.[51]

§ 193. —— Duty to Construct, and to Receive and Deliver Freight.—Under the conditions specified in the proviso in subsection (*a*) hereof, every railroad corporation, upon the application of any corporation or person, being a shipper or receiver or contemplated shipper or receiver of freight, shall construct upon its right of way a spur or spurs for the purpose of receiving and delivering freight thereby, and shall receive and deliver freight thereby.[52]

§ 194. Foreign Public Utilities Excluded. — No foreign corporation, other than those which by a compliance with the laws of this state are entitled to transact a public utility business within this state, shall henceforth transact within this state any public utility business, nor shall any foreign corporation which is at present lawfully transacting business within this state henceforth transact within this state any public utility business of a character different from that which it is at present authorized by its charter or articles of incorporation to transact, nor shall any license, permit or franchise to own, control, operate or manage any public utility business or any part or incident thereof be henceforth granted or

[51] Section 25 (a), p. 33.
[52] Section 25 (b), p. 33.

transferred, directly or indirectly, to any foreign corporation which is not at present lawfully transacting within this state a public utility business of like character; provided, that foreign corporations engaging in commerce with foreign nations or commerce among the several states of this Union may transact within this state such commerce and intrastate commerce of a like character.[53]

§ 195. Street and Interurban Railroad—Fares on. No street or interurban railroad corporation shall charge, demand, collect or receive more than five cents for one continuous ride in the same general direction within the corporate limits of any city and county, or city or town, except upon a showing before the Commission that such greater charge is justified; provided, that until the decision of the Commission upon such showing, a street or interurban railroad corporation may continue to demand, collect and receive the fare in effect on October 10, 1911, or at the time the Commission acquires as to such corporation the power to fix fares within such city and county, or city or town.[54]

§ 196. —— Transfers.—Every street or interurban railroad corporation shall upon such terms as the Commission shall find to be just and reasonable furnish to its passengers transfers entitling them to one continuous trip in the same general direction over and upon the portions of its lines within the same city and county, or city or town, not reached by the originating car.[55]

§ 197. Information and Details to be Furnished—Tabulation, etc.—Every public utility shall furnish to the Commission in such form and such detail as the

[53] Section 26, p. 33.
[54] Section 27, p. 33.
[55] Ib., p. 34.

Commission shall prescribe all tabulations, computations and all other information required by it to carry into effect any of the provisions of this act, and shall make specific answers to all questions submitted by the Commission.[56]

§ 198. —— **Filling Out Blanks—Reason for Failure to be Given.**—Every public utility receiving from the Commission any blanks with directions to fill the same shall cause the same to be properly filled out so as to answer fully and correctly each question propounded therein; in case it is unable to answer any question, it shall give a good and sufficient reason for such failure.[57]

§ 199. —— **Delivering Copies of Maps, Profiles, etc.—Inventory of Property.**—Whenever required by the Commission, every public utility shall deliver to the Commission copies of any or all maps, profiles, contracts, agreements, franchises, reports, books, accounts, papers and records in its possession or in any way relating to its property or affecting its business, and also a complete inventory of all its property in such form as the Commission may direct.[58]

§ 200. —— **To be Kept Private.**—No information furnished to the Commission by a public utility, except such matters as are specifically required to be open to public inspection by the provisions of this act, shall be open to public inspection or made public except on order of the Commission, or by the Commission or a commissioner in the course of a hearing or proceeding.[59]

[56] Section 28 (a), p. 34.
[57] Section 28 (b), p. 34.
[58] Section 28 (c), p. 34.
[59] Section 28 (d), p. 34.

§ 201. —— Misdemeanor to Divulge.—Any officer or employee of the Commission who, in violation of the provisions of this subsection, divulges any such information shall be guilty of a misdemeanor.[60]

§ 202. Annual Report of Public Utilities.—Every public utility shall annually furnish to the Commission at such time and in such form as the Commission may require a report in which the utility shall specifically answer all questions propounded by the Commission upon or concerning which the Commission may desire information. The Commission shall have authority to require any public utility to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special reports concerning any matter about which the Commission is authorized by this or any other act to inquire or to keep itself informed, or which it is required to enforce.[61]

§ 203. —— To be Made Under Oath.—All reports shall be under oath when required by the Commission.[62]

§ 204. Compliance With Commission's Orders.—Every public utility shall obey and comply with each and every requirement of every order, decision, direction, rule or regulation made or prescribed by the Commission in the matters herein specified, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule or regulation by all of its officers, agents and employees.[63]

[60] Ib.
[61] Section 29, p. 34.
[62] Ib.
[63] Section 30, p. 34.

CHAPTER VIII.

POWERS AND DUTIES OF RAILROAD COMMISSION.

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§ 205. Powers of Commission.—The Railroad Commission is hereby vested with power and jurisdiction to supervise and regulate every public utility in the state and to do all things, whether herein specifically designated or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.[1]

[1] Extraordinary Session 1911, c. 14, § 31, p. 35.

I. Generally.

By act of December 23, 1911, the legislature intended the Railroad Commission to be a tribunal of great dignity and responsibility, having to deal with fixed interest and complicated regulations and economical questions, and have given powers appropriate to the discharge of its duties. See Minneapolis, St. P. & Ste. Marie R. Co. v. Railroad Commissioners, 136 Wis. 146, 116 N. W. 915.

The rights of the public and the rights of the railroad under the new California law must be ascertained and developed by the Railroad Commission slowly and laboriously moving from precedent to precedent as new instances arise, after the manner of the common-law courts. See Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission, 136 Wis. 146, 168, 116 N. W. 915.

See Bates v. Relyea, 23 Wend. (N. Y.) 336, 341.

Where a power is given by statute, there is carried with it an implied power to do everything reasonably necessary to make it effective. Missouri, O. & G. R. Co. v. State (Okl.), 119 Pac. 117.

Railroad Commission is authorized to exercise not only legislative, but executive, administrative and judicial powers. St. Louis & S. F. R. Co. v. Williams, 25 Okl. 662, 107 Pac. 428.

Constitutional provision permitting corporation to be formed pursuant to law and providing that the law may be amended, with the prohibition that it shall not be done in such a manner as to impair fixed corporate rights, does not prohibit the application of the Railroad Commission Act (Or. Laws 1907, p. 93, c. 53, § 48), making it an offense

for a railroad company to collect different fares for the same or a like service, to an electric company operating wholly within the limits of a city, and the reduction of fares charged, and the enforcement of transfers, where the electric company is under a contract with its predecessor prohibiting the charge of the fixed amount, with transfer privileges. Portland R. L. & P. Co. v. Railroad Commission, 56 Or. 468, 105 Pac. 709.

Authority and duty of Railroad Commission are not limited to matters concerning public safety and health, but extend to matters concerning public comfort and convenience. In consideration of the latter subject the number of persons who may be concerned or interested at some particular point enter into the consideration as an important factor. Morgan's La. & T. R. & S. S. Co. v. Railroad Commission, 109 La. 247, 33 So. 24.

II. To Make and Enforce Regulations.

Power of Railroad Commission to make and enforce regulations as to the compressing of cotton shipped over railroads under the Texas statute and Railroad Commission Act. Railroad Commission v. Houston & T. C. R. Co., 90 Tex. 340, 349, 355, 38 S. W. 750.

An order of the Minnesota Railroad Commission is conclusive under the provisions of General Statutes of 1894, section 393, as to the reasonableness of the tariff in the absence of an appeal therefrom. State ex rel. Railroad & Warehouse Commission v. Minneapolis & St. L. R. Co., 80 Minn. 191, 83 N. W. 60.

III. To Correct Abuses.

Railroad Commission's power to correct abuses extends only to such as are defined by the law; it does not authorize the Commission to enact a law defining what is an abuse. Railroad Commission v. Houston & T. C. R. Co., 90 Tex. 340, 352, 38 S. W. 750.

Power to "correct abuses" conferred by the legislature upon the Railroad Commission is not limited to regulation of freight and passenger traffic. Railroad Commission v. Houston & T. C. R. Co., 90 Tex. 340, 351, 38 S. W. 750.

Texas Constitution (art. X, § 2) empowering and directing the legislature to enact laws to correct abuses on the different railroads of the state, and this direction imposing the right and duty on the part of the legislature to pass laws for the correction of all abuses or improper uses of the franchises which have been or may be granted to railroads in the state, as well as to all abuses connected with their gross abuse of the public traffic in the exercise of such franchises, the power of the legislature is not limited to the correction of abuses in relation to the rates charged for the carriage of passengers and freight. Railroad Commission v. Houston & T. C. R. Co., 90 Tex. 340, 38 S. W. 750.

IV. To Prevent Discrimination.

Discriminatory charges by electric railway may be corrected by Railroad Commission. Portland R. L. & T. Co. v. Railroad Commission, 56 Or. 468, 105 Pac. 709.

As to what constitutes unlawful discrimination and preference by carriers, see note, 94 C. C. A. 230.

Carrier's charge should not only be reasonable, but should also be equal as to all persons affected thereby. Portland R. L. & P. Co. v. Railroad Commission, 56 Or. 468, 105 Pac. 709. See Messenger v. Pennsylvania R. Co., 36 N. J. L. 407, 13 Am. Rep. 457, 37 N. J. L. 351, 18 Am. Rep. 754.

The Illinois Act of 1873, preventing unjust discrimination between persons and places in the rates charged for transportation, is valid in so far as it relates to unreasonable rates of charge wholly within the state. Chicago, B. & Q. R. Co. v. Jones, 149 Ill. 361, 37 N. E. 247.

The Illinois Act of 1873, relating to extortion and unjust discrimination as to rates charged, construed. Chicago, B. & Q. R. Co. v. Jones, 149 Ill. 361, 37 N. E. 247.

Discrimination in rates charged and transfers previously unjustly made on different branches by city railroads may be corrected and regulated by the Railroad Commission. Portland R. L. & P. Co. v. Railroad Commission, 56 Or. 468, 105 Pac. 715, 109 Pac. 273.

Rates between rival localities must be equal; and in establishing this equality the Railroad Commission cannot take into consideration the fact that the roadbed for the electric road and the value thereof was conveyed by one locality. Portland R. L. & P. Co. v. Railroad Commission, 56 Or. 468, 109 Pac. 273.

Discrimination in rates because of ownership of goods tendered for carriage is made criterion by which charges are to be fixed is illegal. Interstate Commerce Commission v. Delaware L. & W. R. Co., 220 U. S. 235, 31 Sup. Ct. 392, 55 L. ed. 448.

Provision of statute requiring equality in charge for transportation of freight and passengers made under like conditions and circumstances which has been adopted from another jurisdiction, in which jurisdiction it has received construction, is supposed to have been adopted with the construction placed upon it. See Interstate Commerce Commission v. Delaware L. & W. R. Co., 220 U. S. 235, 31 Sup. Ct. 392, 55 L. ed. 448.

Carrier may not have paid the aggregation of shipment by various owners for the purpose of securing carload ratings, or the combination of such shipment by forwarding agents in order to secure carload rates, where the regulations prevent preferences and discriminations. Interstate Commerce Commission v. Delaware, L. & W. R. Co., 220 U. S. 235, 31 Sup. Ct. 392, 55 L. ed. 448.

Dissimilar conditions in transportation are not produced by ownership or nonownership in the party offering the goods for shipment. Interstate Commerce Commission v. Delaware, L. & W. R. Co., 220 U. S. 235, 31 Sup. Ct. 392, 55 L. ed. 448.

Preferences and advantages to particular parties being prohibited by statute, such preferences and advantages in freight are not limited to passenger rates, and the railroad commission has power to make regulations correcting such abuses. Railroad Commission v. Houston & T. C. R. Co., 90 Tex. 340, 351, 38 S. W. 750.

Fares established by carriers voluntarily upon certain branch lines furnish a measure by which to govern the road for similar service upon other branch lines. Portland R. L. & P. Co. v. Railroad Commission, 56 Or. 468, 105 Pac. 709.

Discrimination complained of consisting in giving transfer from another line of railroad to patrons of one branch of the line, while denying such privilege to patrons of another branch line, the Commission has jurisdiction where it has before it the railroad issuing such transfers, it not being necessary that the other line or lines of railroad shall be parties to the proceeding before the Commission, and the Commission may order that the giving of such preferences shall cease and the unlawful discrimination either by giving transfers to patrons of branch lines or by desisting from giving them to patrons of any branch line. Portland R. L. & P. Co. v. Railroad Commission, 56 Or. 468, 109 Pac. 273.

Railroad Commission Act, making it an offense for any railroad company or other carrier to charge or collect for carrying one person more than his demand from another for a like contemporaneous service, applies to the different lines of an electric railroad company, notwithstanding the fact the conditions, such as the cost of construction, etc., are not the same on the several lines. Portland R. L. & P. Co. v. Railroad Commission, 56 Or. 468, 105 Pac. 709.

The amendment to the Oregon Railroad Commission Act (Laws 1909, c. 97, p. 158, §§ 1, 2), making the Railroad Commission law applicable to undue or unreasonable preferences or advantageous to any particular locality, was adopted out of an abundance of caution, to remove all doubt, for plenary power to correct discrimination as to locality was impliedly granted by the original Railroad Commission Act before the enactment of these sections as an amendment thereto. Portland R. L. & P. Co. v. Railroad Commission, 56 Or. 468, 105 Pac. 709.

Acts for which penalty is provided by section 52 of the Oregon Railroad Commission Act (Laws 1907, c. 53, p. 95) are not covered by the condition of the bond contemplated by section 33 of that act (Laws 1907, c. 53, p. 87), as amended in 1909 (Laws 1909, c. 103, p. 163). Oregon R. & Nav. Co. v. Campbell, 173 Fed. 989.

The legislature of Oregon, in the enactment of section 48 of the Railroad Commission Act (Laws 1907, c. 53, p. 93), intended that the prohibition against discretion should not be limited to the transportation over the same line, but should extend to service rendered on other lines operated by the same railroad company, although the cost of construction or maintenance and the volume of business might make the operation of one line more remunerative than that of the other. Portland R. L. & P. Co. v. Railroad Commission, 56 Or. 468, 105 Pac. 709.

Difference between rates compared may be so explained by circumstances as to deprive the low rate of any bearing on the higher; but the discretion, without the excuse recognized by law, is and of itself unjust and unreasonable. Portland R. L. & P. Co. v. Railroad Commission, 56 Or. 468, 109 Pac. 275.

Right of one locality to reasonable and nondiscretionary rates is not increased, nor is the equal right of a competing locality diminished, by reason of a contract entered into by the company's predecessor prior to the passage of the Railroad Commission Act, or by reason of municipal or other subscriptions advanced for the building of the road. Portland R. L. & P. Co. v. Railroad Commission, 56 Or. 468, 109 Pac. 275.

Section 48 of the Oregon Railroad Commission Act (Laws 1907, c. 53, p. 93) does not impair the obligation of contract respecting rates entered into before its enactment, for the reason that such contract necessarily implies the reservation of the right by the state, under the exercise of its police power, to regulate in the future for the public welfare. Portland R. L. & P. Co. v. Railroad Commission, 56 Or. 468, 105 Pac. 713.

V. Regulate and Control Railroads.

Railroad Commissioners of the state of California held to have no jurisdiction over street railways operated in a municipality under act of April 15, 1880 (Stats. 1880, p. 45). Board of Railroad Commrs. v. Market St. R. Co., 132 Cal. 677, 64 Pac. 1055.

See part VII, this note.

The Oregon Railroad Commission Act (Laws 1907, c. 53, p. 71, § 11), the last sentence of which provides that "this act shall not apply to the transportation of passengers being carried solely within the limits of cities by street and other railroads, and shall not apply to logging or other private railroads in doing business as common carriers," does not prohibit the Railroad Commission from regulating rates for passenger traffic originating or extending beyond the boundaries of the corporate limits of any city, and especially of the city of Portland. Portland R. L. & P. Co. v. Railroad Commission, 56 Or. 468, 109 Pac. 275.

Railroad company's authority to collect reasonable fares and charges, though a vested interest, is subject to reasonable regulation under the police power of the state, which may be exercised to promote the public welfare, and to establish between the common carrier and the passenger and shipper such rules and regulations as are calculated to secure to all the enjoyment of individual rights, in so far as such rules and regulations are consistent with a like enjoyment of the rights of others. Portland R. L. & P. Co. v. Railroad Commission, 56 Or. 468, 105 Pac. 713.

Because of the public nature of the business carried on by a railroad and the interest which the public have in the operation thereof, it is subject, as to its state business, to state regulation, which may be exerted either directly by the legislative authorities, or by the administrative bodies endowed with power to that end. Atlantic Coast Line

v. North Carolina Corporate Commission, 206 U. S. 1, 27 Sup. Ct. 581, 51 L. ed. 933.

The question of the reasonableness of rates of charge for transportation by railroad companies, involving as it does the element of reasonableness both as regards the company and as regards the public, is eminently a question for judicial investigation, requiring due process of law for its determination. Chicago, M. & St. P. R. Co. v. Minnesota, 134 U. S. 418, 10 Sup. Ct. 702, 33 L. ed. 970. To same effect, In re Canada Northern R. Co., 7 Fed. 563.

As to right to regulate street railways wholly within municipality, see *ante*, c. 5, footnote 7.

Limitation of speed of interstate trains at approach of dangerous crossings is within the power of the state, in the absence of congressional legislation upon the subject matter. Southern R. Co. v. King, 217 U. S. 524, 30 Sup. Ct. 594, 54 L. ed. 868; Southern R. Co. v. Grizzle, 131 Ga. 287, 62 S. E. 177.

See, also, *ante*, c. 3, § 65.

Regulation of speed within populous districts of municipalities of interstate trains is clearly within the powers of the state and the municipalities, for the protection of the lives and limbs of the people. Erb v. Morasch, 177 U. S. 548, 20 Sup. Ct. 819, 44 L. ed. 897, affirming 60 Kan. 251, 56 Pac. 133; Chicago & A. R. Co. v. Carlinville, 200 Ill. 314, 65 N. E. 730, 93 Am. St. Rep. 190, 60 L. R. A. 391.

Fact train carries United States mail does not affect this right to regulate speed. Peterson v. State, 79 Neb. 132, 112 N. W. 306, 126 Am. St. Rep. 651, 14 L. R. A., N. S., 292. See Whitson v. Franklin, 34 Ind. 392.

VI. Regulate Liability for Injuries.

State regulation prohibiting carriers from contracting for exemptions from or limitation of liability for negligence held not to apply to interstate commerce. Right v. Adams Express Co., 230 Pa. 631, 79 Atl. 760.

State regulation of telegraph companies preventing them from limiting liability for failure to deliver telegrams addressed to a person in another state is constitutional. Western Union Tel. Co. v. Commercial Milling Co., 218 U. S. 406, 31 Sup. Ct. 59, 54 L. ed. 1088.

Provision in charter of railroad company exempting from liability for death of any person in its service, even where caused by negligence, does not create a contract right in the company which is protected by the contract clause of the federal constitution. The subject is one over which the state legislature possesses a regulating power. Texas & N. O. R. Co. v. Miller, 221 U. S. 408, 31 Sup. Ct. 534, 55 L. ed. 789.

"The doctrine that a charter is a contract which the federal constitution protects against impairment by subsequent legislation is ever limited in the arc of its operation by the equally well-settled principle that a legislature can neither bargain away the public power nor in any wise withdraw from its successors the power to take appropriate means to guard the safety, health, and morals of all who may be within

their jurisdiction." Texas & N. O. R. Co. v. Miller, 221 U. S. 408, 31 Sup. Ct. 534, 55 L. ed. 789. See Boston Beer Co. v. Massachusetts, 97 U. S. 25, 24 L. ed. 985; Northwestern Fertilizer Co. v. Hyde Park, 97 U. S. 659, 24 L. ed. 1036; Stone v. Mississippi, 101 U. S. 814, 25 L. ed. 1079; Douglas v. Kentucky, 168 U. S. 488, 18 Sup. Ct. 199, 42 L. ed. 553.

"It is no longer doubted that the legislature may require that trains shall stop at every railroad crossing. Public safety justifies, if it does not compel, this. If the legislature may require a stop, why may it not require a stop of sufficient length to permit passengers to get on and off and with that require suitable depot privileges? . . . . It would seem to be a reasonable exercise of the police power to compel railroad companies to furnish suitable accommodations for passengers at all places where they receive and discharge them from their trains. Public welfare, if not public safety, justifies this." State ex rel. Barton County v. Kansas City F. T. S. & G. R. Co., 32 Fed. 722.

VII. Interstate Commerce not to be Interfered With.

Interstate commerce has no jurisdiction to fix freight rates on shipments not wholly within a state or territory. Ft. Smith & W. R. Co. v. Chandler Cotton Oil Co., 25 Okl. 82, 106 Pac. 10.

Under the provisions of the Federal Constitution, article I, sections 8 and 10, Congress has the sole power to regulate commerce among the several states, and any state by its legislature or Railroad Commission cannot lay imposts or duties upon the imports or exports or otherwise regulate commerce and traffic from beyond the borders of the state. Smith v. Farr, 46 Colo. 364, 104 Pac. 401.

Power to fix the time when an interstate shipment of intoxicating liquors loses its interstate character and becomes subject to state control is exclusively in Congress. McCord v. State, 2 Okl. Cr. 204, 101 Pac. 280.

Where the railroad is engaged in interstate commerce and a shipment is sent by a shipper to a point beyond the state line, and the charges for the transportation are excessive, the shipper seeking redress must apply to the Interstate Commerce Commission and not to the state Railroad Commission or to a state court. Missouri, K. & T. R. Co. v. New Era Milling Co., 80 Kan. 141, 101 Pac. 1011.

Rates established by a state for its Commission for the carriage of interstate freight or passengers, while necessarily affecting indirectly interstate rates, that fact does not render the act establishing the said rates unconstitutional as an interference with the interstate commerce powers of Congress. In re Arkansas Rate Cases, 187 Fed. 290.

Regulation of the state Railroad Commission governing the shipment of livestock does not apply to a shipment from a point out of the state to a point within the state. Leibengood v. Mo. K. & T. Co., 83 Kan. 25, 109 Pac. 988.

An order of the Railroad Commission relating to free storage on less than carload shipments consigned to persons living at points five or

more miles from the railroad station is confined to commerce and carriage within the state and does not apply to interstate commerce consigned to a resident of the state at such a station. Missouri, K. & T. Co. v. New Era Milling Co., 80 Kan. 141, 101 Pac. 1011.

State regulation requiring all natural gas to be transported by domestic corporations whose charter shall provide that the gas shall be transported only between points in the state, and shall not be transported to, nor delivered to, any person or corporation engaged in transporting or furnishing gas to points outside of the state, and giving to such domestic corporations exclusive right of eminent domain and the use of highways, unconstitutionally interferes with interstate commerce, and cannot be justified, as an exercise of the police power of the state to conserve its natural resources. West v. Kansas City Natural Gas Co., 221 U. S. 229, 31 Sup. Ct. 564, 55 L. ed. 716.

Restricting allowance by carrier to owner of elevator for elevating grain in transit in which he has an interest to such grain as shall be reshipped within ten days is within the power of the Interstate Commerce Commission. Interstate Commerce Commission v. Diffenbaugh (U. S., Nov. 13, 1911), modifying 176 Fed. 409.

§ 206. Charges, Rates, etc., to be Fixed by Commission.—Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that the rates, fares, tolls, rentals, charges or classifications, or any of them, demanded, observed, charged or collected by any public utility for any service or product or commodity, or in connection therewith, including the rates or fares for excursion or commutation tickets, or that the rules, regulations, practices or contracts, or any of them, affecting such rates, fares, tolls, rentals, charges or classifications, or any of them, are unjust, unreasonable, discriminatory or preferential, or in anywise in violation of any provision of law, or that such rates, fares, tolls, rentals, charges or classifications are insufficient, the Commission shall determine the just, reasonable or sufficient rates, fares, tolls, rentals, charges, classifications, rules, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order as hereinafter provided.[2]

[2] Section 32 (a), p. 35.

I. Fixing Rates.

1. Power.

Legislature has power to declare what is a reasonable compensation and to fix the reasonable maximum rates of charge for common carriers. Dow v. Beidelman, 125 U. S. 680, 8 Sup. Ct. 1028, 31 L. ed. 841.

Regulation of interstate commerce would be valid if it rested upon the common law of the state and is no less valid because made by its state statute. Western Union Tel. Co. v. Commercial Milling Co., 218 U. S. 406, 31 Sup. Ct. 59, 54 L. ed. 1088.

Legislature may confer on the Commission power to establish and change rates. Railroad Commission v. Alabama & Central Ga. R. Co., 170 Fed. 225, 239; Saratoga Springs v. Saratoga Gas, Elec. Light & Power Co., 191 N. Y. 123, 83 N. E. 693.

The Railroad Commission has jurisdiction over the legal rates within the state notwithstanding the fact that the railroad, in making up its through schedule, takes the sum of the local rates in each state. Louisville & N. R. Co. v. Silor, 186 Fed. 176.

Rate charged by carrier being *per se* reasonable does not prevent it from being at the same time unlawful, where relatively unjust by reason of undue preference afforded to one locality or undue prejudice resulting to another locality, even though the higher rate is not in itself excessive. Portland R. L. & P. Co. v. Railroad Commission, 56 Or. 468, 109 Pac. 273.

The police power to regulate railroads and the private right of ownership of such property coexist, and do not the one destroy the other; hence, the right of ownership of railway property, like other property rights, finds protection in constitutional guaranties, and, therefore, wherever the power of regulation is exerted in such an arbitrary and unreasonable way as to cause it to be in effect not a regulation, but an infringement upon the right of ownership, such an exertion of power is void because repugnant to the due process and equal protection clauses of the Fourteenth Amendment. Atlantic Coast Line R. Co. v. North Carolina Corporate Commission, 206 U. S. 1, 27 Sup. Ct. 585, 51 L. ed. 933, citing Stone v. Farmers' Loan & T. Co., 116 U. S. 307, 331, 6 Sup. Ct. 334, 388, 1191, 29 L. ed. 636, 644; Chicago, M. & St. P. R. Co. v. Minnesota, 134 U. S. 418, 455, 10 Sup. Ct. 462, 702, 33 L. ed. 970, 979, 3 Int. Com. Rep. 209; Chicago & G. T. R. Co. v. Wellman, 143 U. S. 339, 344, 12 Sup. Ct. 400, 36 L. ed. 176, 179; Reagan v. Farmers' Loan & T. Co., 154 U. S. 362, 399, 14 Sup. Ct. 1047, 38 L. ed. 1014, 1024, 4 Int. Com. Rep. 560; St. Louis & S. F. R. Co. v. Gill, 156 U. S. 649, 657, 15 Sup. Ct. 484, 39 L. ed. 567, 570; Chicago, B. & Q. R. Co. v. Chicago, 166 U. S. 226, 241, 17 Sup. Ct. 581, 41 L. ed. 979, 986; Smyth v. Ames, 169 U. S. 466, 512, 18 Sup. Ct. 418, 42 L. ed. 819, 838; Chicago, M. & St. P. R. Co. v. Tompkins, 176 U. S. 167, 172, 20 Sup. Ct. 336, 44 L. ed. 417, 420; Minneapolis & St. L. R. Co. v. Minnesota, 186 U. S. 257, 22 Sup. Ct. 900, 46 L. ed. 1151; Chicago, B. & Q. R. Co. v. Illinois, 200 U. S. 561, 592, 26 Sup. Ct. 341, 50 L. ed. 596, 609.

The Railroad Commission Act of the state of Oregon (Laws 1907, p. 67) contains many features of regulation quite in common with the Interstate Commerce Act of Congress (Act February 14, 1887, c. 104, 24 Stats. at Large, 379, U. S. Comp. Stats. 1901, p. 3154), and amendments (1 Supp. U. S. Rev. Stats., pp. 529, 684, 891), the signal difference between the two acts being that in the former the Commission is empowered to fix the rates, which, when fixed, are made *prima facie* reasonable and just, and, if contested by the interested parties, the burden is cast upon such parties to institute the proper proceeding or action, and to overcome the *prima facie* case by proof to the contrary; while under the Oregon Act, the Commission orders and directs changes to be made in rates, if found to be unreasonable and unjust, and the rates named by the Commission are deemed to be *prima facie* reasonable and just, and if the interested parties refuse to obey the orders of the Commission naming the rates, the Commission is authorized to enforce obedience by a suit in the federal courts; in which suit the party contesting has the burden of overcoming the *prima facie* case of the reasonableness of the rates directed by the Commission for adoption, and must do so in its defense, or the Commission's order stands. Oregon R. & Nav. Co. v. Campbell, 173 Fed. 957.

In this case no question was raised as to the constitutional authority or powers of the Commission to fix such rates, or as to whether in fixing such rates it exercised a legislative, judicial or administrative function—it being apparently conceded that those powers were adequate in respect to making rates, in so far as they were reasonable. Oregon R. & Nav. Co. v. Campbell, 173 Fed. 957.

2. Charter Rights.

Railroad's right to charge and collect reasonable fares, though a fixed right, is a right that is subject to regulation under the exercise of the police power of the state for the public welfare. Portland R. L. & P. Co. v. Railroad Commission, 56 Or. 468, 105 Pac. 709; Bullard v. Montana Pac. R. Co., 10 Mont. 168, 25 Pac. 120, 11 L. R. A. 246.

Railroad company, incorporated under statute giving it "power to collect such tolls for the transportation of persons and property as it may prescribe," does not constitute a contract between the state and the railroad company, the obligation of which cannot be impaired by subsequent legislation. State v. So. Pac. Co., 23 Or. 424, 31 Pac. 961, approving Wells, Fargo Co. v. Oregon R. & Nav. Co., 8 Saw. 600, 15 Fed. 561; Ex parte Koehler, 11 Saw. 37, 27 Fed. 529.

3. Method of Procedure.

Commission empowered to determine first whether a rate or service complained of is unreasonable, and until the fact that it is unreasonable is established, no further action by the Commission is authorized. Minneapolis, St. P. & Ste. Marie R. Co. v. Railroad Commission (dis. op. Dodge, J.), 136 Wis. 146, 116 N. W. 915.

After a finding by the Commission that the rate of service complained of is unreasonable, it is the duty of the Commission to proceed to ascertain and declare what is the reasonable rate or service, which is the maximum rate or minimum service consistent with reason. Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission (dis. op. Dodge, J.), 136 Wis. 146, 116 N. W. 915.

Reasonable service or rate, Commission empowered to fix and order, for substitute for the service or rate complained of in each case. The minimum service or the maximum rate which is reasonable is the thing to be determined. Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission (conc. op. Marshall & Bashford, JJ.), 136 Wis. 146, 116 N. W. 915.

The Commission is not given power or discretion to fix one of several rates either of which would be just and reasonable, and this being the case, there is no delegation to the Commission of pure legislative power. See Minneapolis, St. P. & Ste. Marie R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 915.

Selection and fixing of any other than the maximum rate or minimum service necessarily involved is not merely the ascertainment of a fact or condition, but also the exercise of choice or discretion passed on consideration of policy and expediency, the power to exercise which is purely legislative and cannot be delegated to a Commission. Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission (dis. op. Dodge, J.), 136 Wis. 146, 116 N. W. 915.

4. Basis of Computation.

Rates fixed by the state for transportation of commerce between points located within the state are wholly within the power of the state. See Louisville & N. R. Co. v. Kentucky, 183 U. S. 503, 22 Sup. Ct. 95, 46 L. ed. 298.

"State cannot justify unreasonably low rates for domestic transportation considered alone upon the ground that the carrier is earning large profits on its interstate business, over which, so far as rates are concerned, the state has no control." Smyth v. Ames, 169 U. S. 466, 18 Sup. Ct. 418, 42 L. ed. 819.

Carriers cannot justify unreasonably high rates on domestic business upon the ground that it will be able in that way only to meet losses in its interstate business. Smyth v. Ames, 169 U. S. 466, 18 Sup. Ct. 418, 42 L. ed. 819.

Actual value of railroad is basis on which Railroad Commission may fix rates, and not the bonded indebtedness, capital stock and current indebtedness, unless it be shown that the value of the road equals such outstanding indebtedness. State v. So. Pac. Co., 23 Or. 424, 31 Pac. 960.

Bonded indebtedness, capital stock and current expenses are not to be taken into consideration by Railroad Commission in fixing rates, unless it be shown that the value of the road equals such outstanding indebtedness. State v. So. Pac. Co., 23 Or. 424, 31 Pac. 960.

The question whether the amount of compensation accruing to a public utility from rates fixed, over and above expenditures for current year, can be properly considered and allowed in fixing such rates at a reasonable compensation, is a question of fact, depending upon all the circumstances of the case, to be determined by the body fixing the rates in the first instance, and the jurisdiction of a court on review is limited to a review of the action of the body so fixing the rates. Redlands L. & C. D. Co. v. City of Redlands, 121 Cal. 312, 53 Pac. 791.

"Estimate placed by party upon the value of his own service or of his property is always sufficient, against him, to establish the real value; but it has augmented probative force and is almost conclusive against him, when he has adopted it in a long-continued and extensive course of business dealing and while it is used as a fixed and notorious standard for the information of the public." Menacho v. Ward, 27 Fed. 529, 532.

5. Opportunity to be Heard.

Opportunity to be heard on the fixing of rates is not denied where there are conferences between the officers of the public utility whose rates are fixed and the board or body fixing the rates, although such officers are not allowed to be present at the final meeting when the rates are determined and fixed. San Diego L. & T. Co. v. National City, 174 U. S. 739, 19 Sup. Ct. 804, 43 L. ed. 1154.

As to notice and opportunity on fixing or charging rates, see *post*, § 321.

6. In Force How Long.

Rates established by Railroad Commission remain in force until a change in rates is published as in the act provided for. Hooper v. Chicago M. & St. P. R. Co., 91 Iowa, 639, 60 N. W. 487.

7. Unreasonable Rates.

Fixing and enforcement by Railroad Commission of unjust and unreasonable rates for transportation by railroad companies is an unconstitutional denial of the equal protection of the laws, because a corporation cannot be required to use its property for the benefit of the public without receiving a just compensation in return for the services rendered. Portland R. L. & P. Co. v. Railroad Commission, 56 Or. 468, 109 Pac. 273.

II. Rates Fixed Prima Facie Reasonable.

Board of Railroad Commissioners is authorized to make a schedule of rates, and their schedule is merely given the force and effect of *prima facie* evidence as to the reasonableness of the rates, in a suit regarding thereto. Chicago, B. & Q. R. Co. v. Jones, 149 Ill. 361, 37 N. E. 247.

When a maximum rate is established by the Railroad Commission, the rates fixed by the directors of a railroad corporation must conform to such commission rates, otherwise they are repugnant to the laws of the state. Chicago, B. & Q. R. Co. v. Jones, 149 Ill. 361, 37 N. E. 247.

Provision of the act that the fixing of rates and orders entered by the Commission shall be *prima facie* evidence of the reasonableness of such rates, but enacts a rule of evidence and is quite within the general power of the legislature. Mobile, J. & K. C. R. Co. v. Turnipseed, 219 U. S. 35, 31 Sup. Ct. 136, 55 L. ed. 78. See Adams v. New York, 192 U. S. 585, 24 Sup. Ct. 372, 48 L. ed. 575; People v. Cannon, 139 N. Y. 32, 34 N. E. 759, 36 Am. St. Rep. 668; Horne v. Memphis & O. R. Co., 41 Tenn. (1 Cold.) 72; Meadowcroft v. People, 163 Ill. 56, 45 N. E. 303, 54 Am. St. Rep. 447, 35 L. R. A. 176; Com. v. Williams, 72 Mass. (6 Gray) 1; State v. Thomas, 144 Ala. 77, 40 So. 271, 113 Am. St. Rep. 17, 6 Am. & Eng. Ann. Cas. 744, 2 L. R. A., N. S., 1011.

III. Passes and Free Transportation.

Regulation invalidating existing contract for free transportation by a carrier is valid. Louisville & N. R. Co. v. Mottley, 219 U. S. 467, 31 Sup. Ct. 265, 55 L. ed. 297.

Regulation preventing carrier from issuing annual passes for life in consideration of release of claim for damages is valid although it has the effect to render nugatory, in that it is no longer enforceable, a contract for such passes theretofore made by a carrier. Louisville & N. R. Co. v. Mottley, 219 U. S. 467, 31 Sup. Ct. 265, 55 L. ed. 297.

Regulations preventing railroad company from issuing free pass for life in consideration of release of claim for damages is valid. Louisville & N. R. Co. v. Mottley, 219 U. S. 467, 31 Sup. Ct. 265, 55 L. ed. 297.

IV. Existing Contracts for Transportation.

Contract for transportation made prior to the passage of the Railroad Commission Act is impliedly made subject to the reservation in the constitution of the police power in the state to regulate. Such a contract is not a vested right protected by article XI, section 2, of the Oregon Constitution (before its amendment in 1905), and does not impair the obligation of the contract under article I, section 21 of the Oregon Constitution. Portland R. L. & P. Co. v. Railroad Commission, 56 Or. 468, 105 Pac. 713.

V. Reasonable Regulations—Interstate Commerce.

State regulation of foreign oil company, in absence of a congressional act covering the subject matter, is valid. Standard Oil Co. of Kentucky v. Tennessee, 217 U. S. 413, 30 Sup. Ct. 543, 54 L. ed. 87.

Enforcement of state regulations forbidding discrimination in rates in case of articles of a like kind carried for different distances over the same line may somewhat affect commerce generally, but such a result is too remote and indirect to be regarded as an interference with interstate commerce; the interference with the commercial powers of the general government, to be unlawful, must be direct and not the mere incidental effect of enforcing police power of a state. Louisville & N. R. Co. v. Kentucky, 183 U. S. 502, 22 Sup. Ct. 95, 46 L. ed. 298. See New York, L. E. & W. R. Co. v. Pennsylvania, 158 U. S. 431, 15 Sup.

Ct. 896, 39 L. ed. 1043; Henderson Bridge Co. v. Kentucky, 166 U. S. 150, 17 Sup. Ct. 532, 41 L. ed. 953.

Regulation requiring unloading of livestock during transit, and the number of penalties attached for failure to comply with the regulation: See Baltimore & O. R. Co. v. United States, 220 U. S. 94, 31 Sup. Ct. 368, 55 L. ed. 384.

VI. Regulation Affixing Penalty.

An act making it penal for any railroad company to extort unreasonable charges for the transportation of passengers or the carrying of freight or to make unjust discrimination is not void for uncertainty in defining the offense by reason of the power of the Commission to impose the penalties therein mentioned. Chicago, B. & Q. R. Co. v. Jones, 149 Ill. 361, 37 N. E. 247.

Taking higher rates than those fixed by the Railroad Commission are not subject to the penalties of the statute, upon making proof that the rates were fair and reasonable. Chicago, B. & Q. R. Co. v. Jones, 149 Ill. 361, 37 N. E. 247.

State regulations affixing a penalty for negligent failure of telegraph company to transmit, within the state, message received at an office within the state for the purpose of transmission to an addressee in another state is a valid exercise of the police power of the state, in the absence of any legislation by Congress covering the subject. Western Union Tel. Co. v. Crovo, 220 U. S. 364, 31 Sup. Ct. 399, 55 L. ed. 498.

The repeal of an administrative order made by the Corporation Commission, providing for the enforcement of certain penalties against passengers who board trains without purchasing tickets, is not appealable. St. Louis & S. F. R. Co. v. State, 28 Okl. 802, 115 Pac. 874.

VII. Water Rates.

It is competent for a state to declare that the use of water appropriated for sale, rental, or distribution shall be a public use, subject to public regulation and control, and for the legislature to confer upon a body or board power to fix rates of compensation for use of the water supply; but this power thus conferred cannot be exercised arbitrarily and without reference to what is just and reasonable as between the public and the individual or company supplying the water for general use. San Diego L. & T. Co. v. National City, 174 U. S. 739, 19 Sup. Ct. 804, 43 L. ed. 1154. See Cotting v. Kansas City Stock Yards Co. (Cotting v. Godard), 183 U. S. 85, 22 Sup. Ct. 30, 46 L. ed. 99; Stanislaus County v. San Joaquin & K. River Canal & Irr. Co., 192 U. S. 210, 24 Sup. Ct. 241, 48 L. ed. 412; Madisonville Traction Co. v. St. Bernard Min. Co., 196 U. S. 252, 25 Sup. Ct. 251, 49 L. ed. 467; In re New York & W. W. Co., 98 Fed. 716.

As to regulation of water rates, see notes, 21 L. R. A. 519; 33 L. R. A. 181; 12 L. R. A., N. S., 711.

Contract made by a municipal corporation, under authority of statute, for a reasonable number of years, for a supply to the city of

water, with a provision for the regulation of water rates, including a limitation not to reduce the then existing rates, form a valid and enforceable contract. Los Angeles v. Los Angeles City Water Co., 177 U. S. 558, 20 Sup. Ct. 736, 44 L. ed. 886. See Freeport Water Co. v. Freeport, 180 U. S. 593, 21 Sup. Ct. 493, 45 L. ed. 686; Detroit v. Detroit Citizens' Street R. Co., 184 U. S. 382, 22 Sup. Ct. 410, 46 L. ed. 605; Vicksburg Water Works Co. v. Vicksburg, 185 U. S. 82, 22 Sup. Ct. 585, 46 L. ed. 816; Riverside & A. R. Co. v. Riverside, 118 Fed. 741; Denver v. Hubbard, 17 Colo. App. 367, 68 Pac. 993; Tampa v. Tampa Water Works Co., 45 Fla. 623, 34 So. 631; Reed v. Anoka, 85 Minn. 297, 88 N. W. 931; Knoxville v. Knoxville Water Co., 107 Tenn. 680, 64 S. W. 1075, 61 L. R. A. 897.

As to right to regulate rates where water is furnished by contract, see Owensboro v. Owensboro Water Works Co., 191 U. S. 358, 24 Sup. Ct. 82, 48 L. ed. 217.

Contract providing rates should not be changed for thirty years held to be unauthorized under Illinois Act, April 9, 1872. Freeport Water Co. v. Freeport, 180 U. S. 587, 21 Sup. Ct. 493, 45 L. ed. 679; Danville Water Co. v. Danville, 180 U. S. 619, 21 Sup. Ct. 505, 45 L. ed. 696. See Rogers Park Water Co. v. Fergus, 180 U. S. 628, 21 Sup. Ct. 490, 45 L. ed. 705; Omaha Water Co. v. Omaha, 147 Fed. 6, 77 C. C. A. 272; Tampa v. Tampa Water Co., 45 Fla. 623, 34 So. 631; Davenport Gas & E. Co. v. Davenport, 124 Iowa, 31, 98 N. W. 892.

Contract fixing maximum water rates to private consumers for a period of thirty years will be binding unless so grossly unreasonable as to suggest fraud or corruption, and, as such, is protected against impairment by the contract clause of the federal constitution. See Vicksburg v. Vicksburg Water Works Co., 206 U. S. 496, 27 S. W. 762, 55 L. ed. 1155.

Whether rates to be charged by a water company, fixed by municipal ordinance or otherwise, are reasonable or unreasonable is a judicial question, and the court may invoke the federal court to determine whether the fixing of such rates deprives the company of its property without due process of law. Spring Valley Water Works v. San Francisco, 165 Fed. 657.

In determining the reasonableness or unreasonableness of rates fixed by municipalities or a board, the expense of procuring sources of supply of water largely in excess of present needs is not to be taken into consideration in determining the value of the property, such source of supply not being at present used or useful in the business of the company nor necessary for the wants of the people. Spring Valley Water Works v. San Francisco, 192 Fed. 137.

For the purpose of determining whether rates to be charged by a water company, as fixed, are reasonable or confiscatory in their nature, the value of the property of the water company at the time of the inquiry, and that property only, is to be considered which was then being used and useful in the business of supplying water. Spring Valley Water Works v. San Francisco, 192 Fed. 137.

In determining whether water rates fixed are reasonable or unreasonable, it is proper to consider the value of the property of the water company, and that value consisted of (1) the cost of construction, (2) the amount expended in permanent improvements, (3) the amount of the market value of the stocks and bonds of the company issued and outstanding, (4) the present cost of construction as compared with the original cost, (5) the probable earning capacity of the property under the rate prescribed, (6) the amount of money required to meet operating expenses, (7) the cost to obtain water equal in quantity and quality to the supply at that time furnished from the next most available source of supply, (8) the depreciation of that portion of the plant of the company which is worn by use or the action of the elements or its value is depreciated by newer, cheaper, and more efficient appliances and machinery, (9) the franchise of the plant, and (10) the fact that the company is a going concern. Spring Valley Water Works v. San Francisco, 192 Fed. 137.

The basis of calculation for determining whether rates to be charged by a water company, fixed by a municipality, are just and reasonable, is the reasonable value of the property necessarily employed in rendering the probable service required of such company and the fair value to the public of the service rendered; and in determining this question the amount and value of the bonds and stocks of the corporation, if not in excess of the real value of the property, may properly be considered. Spring Valley Water Works v. San Francisco, 124 Fed. 574.

The franchise of a water company in California is an element to be considered in determining the value of the corporate property necessarily employed in the service of supplying water to a city, etc.; and so, also, is the enhanced value of the property by the reason of the fact that the company has an established business and is a going concern. Spring Valley Water Works v. San Francisco, 124 Fed. 574.

Ordinance reducing rate to be charged by water company to private consumers so that the annual net earnings would not exceed four and four-tenths per cent on the value of the property necessarily employed in the service, or three and three-tenths per cent on its stock after deducting its fixed charges, was held to be unconstitutional and invalid. Spring Valley Water Works v. San Francisco, 124 Fed. 574.

In fixing rates of water charges, losses from distribution of water to consumers outside of city cannot be taken into consideration. San Diego L. & T. Co. v. National City, 174 U. S. 739, 19 Sup. Ct. 804, 43 L. ed. 1154.

Price at which a waterworks plant was sold under foreclosure is evidence which may be taken into consideration in fixing and regulating water rates, in estimating and determining the value of the plant on which a fair return is to be secured. San Diego L. & T. Co. v. Jasper, 189 U. S. 439, 23 Sup. Ct. 571, 47 L. ed. 892.

Valuation for purpose of taxation may be taken into consideration in determining reasonableness of rates fixed, especially where such valuation was shown to be by officers of the public utilities company. San

Diego L. & T. Co. v. Jasper, 189 U. S. 439, 23 Sup. Ct. 571, 47 L. ed. 892.

Under a statute providing that water appropriated for sale, rental, or distribution is a public use, and the collection of rates of compensation for such service a franchise which cannot be exercised except by the authority of and in the manner prescribed by law, the legislature is authorized to provide for fixing the rates to be charged, and an irrigation company has no authority to make a distinction between its customers, supplying some with low rates, and attacking the validity of the maximum rates fixed by the authorities under the statute, on the ground that, as applied to those other customers, the rates fixed will not yield a reasonable return on the investment, but will amount to a taking of its property without compensation. The rule for determining the reasonableness of rates is to consider the rates fixed applicable to all the customers. Boise City Irr. & L. Co. v. Clark, 131 Fed. 415, 65 C. C. A. 406.

Maximum rates fixed pursuant to statute do not deprive the company of its property without compensation because the rate as fixed will not produce sufficient revenue above expenses and fixed charge to pay a reasonable income on the money invested, in those cases where the plant was constructed on a large scale and at a greater outlay than was necessary to supply the present needs of customers, and with the purpose of supplying a larger area of territory and a greater number of customers. Boise City Irr. & L. Co. v. Clark, 131 Fed. 415, 65 C. C. A. 406. See San Diego L. & T. Co. v. Jasper, 189 U. S. 439, 446, 23 Sup. Ct. 571, 47 L. ed. 892.

VIII. Irrigation.

In fixing the rates to be charged by public utility—such as the rates for furnishing of water by a water company to the inhabitants of a municipality for domestic use—the public utilities company is not entitled to be reimbursed from the income derived from the rates fixed for interest upon its indebtedness, nor for depreciation of its plant, aside from the amount requisite for its maintenance and repair during the year. Redlands L. & C. D. Water Co. v. City of Redlands, 121 Cal. 312, 53 Pac. 791. See San Diego Water Co. v. San Diego, 118 Cal. 556, 50 Pac. 633, 62 Am. St. Rep. 261.

Irrigation rates established are not necessarily unreasonable because they will yield only a full return on the total value of the plant when the water company shall serve the entire area which its system will supply. San Diego L. & T. Co. v. Jasper, 189 U. S. 439, 23 Sup. Ct. 571, 47 L. ed. 892, affirming 110 Fed. 702; and approved in Boise City Irr. & L. Co. v. Clark, 131 Fed. 415, 422, 65 C. C. A. 339 (upholding rates fixed where plant constructed on large scale and necessary for present use); Brunswick Water Dist. v. Maine Water Co., 99 Me. 380, 59 Atl. 540 (determining valuation of public service corporation).

Rates established for water furnished for irrigation purposes are not necessarily unreasonable because they will yield a full return on the total value of the plant only when the water company shall serve the

entire area which its system will supply. San Diego L. & T. Co. v. Jasper, 189 U. S. 439, 23 Sup. Ct. 571, 47 L. ed. 892. See Stanislaus County v. San Joaquin & K. River Irr. Co., 192 U. S. 215, 24 Sup. Ct. 241, 48 L. ed. 414; Boise City Irr. & L. Co. v. Clark, 131 Fed. 422, 65 C. C. A. 406; Brunswick F. T. W. Dist. v. Maine Water Co., 99 Me. 380, 59 Atl. 537.

IX. Orders.

Orders and rules of the Railroad Commission, where wholly legislative in their nature, are unenforceable, because the power to make such orders and rules cannot be delegated by the legislature to the Commission. See Minneapolis, St. P. & Ste. Marie R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 915.

Order issued by Commission respecting the keeping open of depots and stations and the receipt of passengers therein, may, in a particular case, result in hardship or injury, but this is no criterion by which to test the reasonableness of the regulation; if it conduces to the interest of the railway company and works no hardship to the traveling public, it must be considered as reasonable. Smith v. Seaboard Airline R. Co. (Ga. App.), 73 S. E. 523.

Order of Railroad Commission directing electric rc·l to cease an unlawful discrimination between passengers from different localities served by it and directing that equal transfer privileges be supplied may be complied with by giving transfers to all or by refusing to give transfers to any; such order of the Commission is not a command that transfers be given. Portland R. L. & P. Co. v. Railroad Commission, 56 Or. 468, 109 Pac. 273.

Refusal of order of Commission does not ascertain or establish the point of reasonableness, but leaves it undisclosed and the former rates to stand, requiring the commissioners to make another trial to find a rate that is reasonable. Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission, 136 Wis. 146, 165, 116 N. W. 915.

Confiscatory order must be such as to deprive the railroad of a fair rate upon the value of its property, not merely one which reduces former rates or charges. Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission, 136 Wis. 146, 167, 116 N. W. 915.

In determining whether or not an order of the Commission is unreasonable, it must be considered that every unnecessary burden imposed upon a railroad impairs its net receipts and diminishes that margin, if there be one, between the amount sufficient to insure a fair rate on the value of its property; proof may be made of the amount of its fixed charges and operating expenses, and of its gross receipts. In this margin the public and the railroad are interested, because it is only when this exists that betterments in construction or improvements in service not imperative or indispensable, or reduction in rates, will ordinarily be voluntarily made by the railroad or can ordinarily by order be enforced by the Commission. Minneapolis, St. Paul & Ste. M. R. Co. v. Railroad Commission, 136 Wis. 146, 168, 116 N. W. 915.

See Covington & L. T. R. Co. v. Sandford, 164 U. S. 578, 17 Sup. Ct. 198, 41 L. ed. 560.

No valid ground of distinction between unlawful orders and unreasonable orders of the Commission. An unreasonable order is an unlawful order. Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission, 136 Wis. 146, 167, 116 N. W. 915.

Unreasonable order falling short of being confiscatory. Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission, 136 Wis. 146, 167, 116 N. W. 915.

§ 207. —— Investigating and Fixing Single Rates, etc.—The Commission shall have power, upon a hearing, had upon its own motion or upon complaint, to investigate a single rate, fare, toll, rental, charge, classification, rule, regulation, contract or practice, or any number thereof, or the entire schedule or schedules of rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts and practices, or any thereof, of any public utility, and to establish new rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts or practices, or schedule or schedules, in lieu thereof.[8]

§ 208. Joint Rates and Through Rates on Common Carriers.—Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that the rates, fares or charges in force over two or more common carriers, between any two points in this state, are unjust, unreasonable or excessive, or that no satisfactory through route or joint rate, fare or charge exists between such points, and that the public convenience and necessity demand the establishment of a through route and joint rate, fare or charge between such points, the Commission may order such common carriers to establish such through route and may establish and fix a joint rate, fare or charge which will be fair, just, reasonable and sufficient, to be followed, charged, enforced, demanded and collected in the

[8] Section 32 (b), p. 35.

future, and the terms and conditions under which such through route shall be operated.[4]

§ 209. —— Transportation in Originating Car.—The Commission may order that freight moving between such points shall be carried by the different common carriers, parties to such through route and joint rate, without being transferred from the originating cars.[5]

§ 210. —— Division of Rates, etc.—Supplemental Order.—In case the common carriers do not agree upon the division between them of the joint rates, fares or charges established by the Commission over such through routes, the Commission shall, after hearing, by supplemental order, establish such division; provided, that where any railroad which is made a party to a through route has itself over its own line an equally satisfactory through route between the termini of the through route established, such railroad shall have the right to require as its division of the joint rate, fare or charge its local rate, fare or charge over the portion of its line comprised in such through route, and the Commission may, in its discretion, allow to such railroad more than its local rate, fare, or charge whenever it will be equitable so to do.[6]

§ 211. Powers of Commission to Establish Rates and Fix Division of.—The Commission shall have the power to establish and fix through routes and joint rates, fares or charges over common carriers and stage

[4] Section 33, p. 35.

Joint rates to be reasonable and just. Oregon R. & Nav. Co. v. Campbell, 173 Fed. 980.

[5] Section 33, p. 35.

[6] Ib., p. 36.

or auto stage lines and to fix the division of such joint rates, fares or charges.[7]

§ 212. Interstate Rates—Application to Commerce Commission.—The Commission shall have the power to investigate all existing or proposed interstate rates, fares, tolls, charges and classifications, and all rules and practices in relation thereto, for or in relation to the transportation of persons or property or the transmission of messages or conversations, where any act in relation thereto shall take place within this state; and when the same are, in the opinion of the Commission, excessive or discriminatory or in violation of the act of Congress entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and the acts amendatory thereof and supplementary thereto, or of any other act of Congress, or in conflict with the rulings, orders or regulations of the Interstate Commerce Commission, the Commission may apply by petition or otherwise to the Interstate Commerce Commission or to any court of competent jurisdiction for relief.[8]

§ 213. Service, Equipment, Facilities—To be Fixed by Commission.—Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that the rules, regulations, practices, equipment, appliances, facilities or service of any public utility, or the methods of manufacture, distribution, transmission, storage or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the Commission shall determine the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, con-

[7] Ib.

[8] Section 34, p. 36.

structed, enforced or employed and shall fix the same by its order, rule or regulation.[9]

§ 214. Rules and Regulations, etc., to be Prescribed by Commission.—The Commission shall prescribe rules and regulations for the performance of any service or the furnishing of any commodity of the character furnished or supplied by any public utility, and, on proper demand and tender of rates, such public utility shall furnish such commodity or render such service within the time and upon the conditions provided in such rules.[10]

§ 215. Power of Commission to Order Additions, Changes, Improvements.—Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the Commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made or such structure or structures be erected in the manner and within the time specified in said order.[11]

[9] Section 35, p. 36.

[10] Ib.

[11] Section 36, p. 36.

An order of a state Railroad Commission directing the installation and use of an interlocking plant at the crossing on grade of two railroads and apportioning between the companies the expense of executing the order is not an infringement of the constitutional guaranty of the right of contract where there is an existing contract between such intersecting railroad companies, under which contract the junior road has the duty of constructing and properly maintaining the physical

§ 216. —— Site of New Structure may be Fixed.— If the Commission orders the erection of a new structure, it may also fix the site thereof.[12]

crossing and providing and maintaining semaphores and other signals, and providing and maintaining the requisite watchmen to take charge of and operating the same. Grand Trunk W. R. Co. v. Railroad Commission of Indiana, 221 U. S. 400, 31 Sup. Ct. 537, 55 L. ed. 786.

The Railroad Commission has power after hearing complaint and determining facts to make an order requiring the erection and construction, at a point named on the line, by a common carrier, of a platform suitable for the loading and unloading of cream and other merchandise shipped by express; and that such platform be constructed so as to be useful to teams, and of the kind and dimensions usual and customarily furnished at small stations where no depot is maintained; and also that it be sufficient to enable passengers to get on and off trains with safety. See Minneapolis, St. P. & Ste. Marie R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 915.

Statute requiring railroad corporation to build and maintain depots are sustainable under the police power of the state. State ex rel. Barton County v. Kansas City F. T. S. & G. R. Co., 32 Fed. 722.

Railroad company may be required at its own expense to construct a railway bridge over a highway made necessary by the opening of a road. Cincinnati, I. & W. R. Co. v. Connorsville, 218 U. S. 336, 31 Sup. Ct. 93, 54 L. ed. 1060.

Railroad company not entitled to be reimbursed for moneys thus necessarily expended. Chicago, B. & Q. R. Co. v. Illinois, 200 U. S. 562, 582, 584, 591, 26 Sup. Ct. 341, 4 Am. & Eng. Ann. Cas. 1175, 50 L. ed. 601, 605, 606, 608; New Orleans Gaslight Co. v. Drainage Commrs., 197 U. S. 453, 25 Sup. Ct. 471, 49 L. ed. 831; New York & N. E. R. Co. v. Bristol, 151 U. S. 556, 571, 14 Sup. Ct. 437, 38 L. ed. 269, 274; Chicago, B. & Q. R. Co. v. Chicago, 166 U. S. 226, 254, 17 Sup. Ct. 581, 41 L. ed. 979, 990; Northern Transp. Co. v. Chicago, 99 U. S. 635, 25 L. ed. 336. See, also, Union Bridge Co. v. United States, 204 U. S. 364, 27 Sup. Ct. 367, 51 L. ed. 523.

[12] Section 36, p. 37.

Power of the legislature to enact a statute requiring the establishment of union depots has been established by numerous and well-considered decisions. Industrial Siding Cases, 140 N. C. 239, 52 S. E. 941; Corporation Commission v. Atlantic Coast Line R. Co., 139 N. C. 126, 51 S. E. 793.

It is competent for the legislature to compel a railroad to turn over its property to its competitors, or, what is the same thing, to enter into a union depot arrangement with its competitors. Mo. O. & G. R. Co. v. State (Okl.), 119 Pac. 117. See Mayor of Worcester v. Norwich & W. R. Co., 109 Mass. 103; State ex rel. Barton Co. v. Kansas

§ 217. —— Making at Joint Cost—Apportionment of Cost.—If any additions, extensions, repairs, improvements or changes, or any new structure or structures which the Commission has ordered to be erected, require joint action by two or more public utilities, the Commission shall notify the said public utilities

City, Ft. S. & G. R. Co,, 32 Fed. 722; Dewey v. Atlantic Coast Line R. Co., 142 N. C. 392, 55 S. E. 292.

In an action to recover the penalty under the Texas statute for failure to establish a depot at a railway crossing, the defense was that the act authorizing the requirement of such depot was in violation of sections 1 and 2 of article X of the Constitution of Texas; but the court, in effect, held that the regulation prescribed by the statute for the purpose of carrying out the sections of the constitution might very properly extend to just such matters as were embraced in the act in question, and that said act simply prescribed more fully than did former laws what accommodations should be furnished at such places. San Antonio & A. P. R. Co. v. State, 79 Tex. 264, 14 S. W. 1063.

An act of Massachusetts (Stats. 1781, c. 343) provided for a union passenger station and for the removal of tracks from certain public ways and grounds in the city of Worcester. In an attack on the validity of statute, proof was offered to the effect that to extend the roads named to a union passenger station, at a point selected, would make it necessary for each of them to extend the tracks a great distance, amounting in the aggregate to many thousand feet, and at a cost amounting in the aggregate to several hundred thousand dollars, etc., the court held that this act requiring named railroads to unite in a union passenger station at a point to be determined by commissioners to be constitutional and valid, being a reasonable exercise of the right reserved to the legislature to amend, alter or repeal the charters of those corporations. Mayor of Worcester v. Norwich & W. R. Co., 109 Mass. 103, approved in Northern Pac. R. Co. v. Dustin, 142 U. S. 492, 12 Sup. Ct. 283, 35 L. ed. 1092.

Statute or order of Railroad Commission establishing station is not to be interfered with except upon clear and satisfactory evidence showing that it is unjust and unreasonable. In Matter of Auburn & W. R. Co., 37 App. Div. 162, 55 N. Y. Supp. 895.

An order of the Railroad Commission for the establishment of a union depot being found to be just and reasonable must be affirmed. Mo. O. & G. R. Co. v. State, 119 Pac. 117, citing Detroit, Ft. W. & B. I. R. Co. v. Osborn, 189 U. S. 383, 23 Sup. Ct. 540, 47 L. ed. 760; So. Pac. R. Co. v. Minn., 298 U. S. 583, 38 Sup. Ct. 341, 52 L. ed. 630; Wisconsin, M. & P. R. Co. v. Jacobson, 179 U. S. 287, 21 Sup. Ct. 115, 45 L. ed. 194; Railroad Commrs. v. Portland & O. Cen. R. Co., 63 Me.

that such additions, extensions, repairs, improvements or changes or new structure or structures have been ordered and that the same shall be made at their joint cost, whereupon the said public utilities shall have such reasonable time as the Commission may grant within which to agree upon the portion or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures, which each shall bear.[18]

§ 218. —— Fixing Proportion of Cost by Commission.—If at the expiration of such time such public utilities shall fail to file with the Commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements or changes,

269; Fitchburg R. Co. v. Grand Junction R. Co., 86 Mass. (4 Allen) 198; 8 Am. & Eng. Ency. of Law, 385.

Order of Commission, made on petition filed, not having the effect to interfere with interstate commerce, the Commission has jurisdiction to enter the same. See authorities in paragraph above.

Point selected by Commission for erection of depot as being for best interests of public along line of road should also be a point at which the business of the road is remunerative, is a contention not supported by the authority, nor is it sustainable on principle in view of theory upon which state grants franchises and corporations rights. Morgan's La. & T. R. & S. S. Co. v. Railroad Commission, 109 La. 247, 33 So. 24.

Ability of railroad, in view of its entire business, to maintain and establish depot, and not situated at some particular locality, is to be taken into consideration. Morgan's La. & T. R. & S. S. Co. v. Railroad Commission, 109 La. 247, 33 So. 24.

Where a state, either by statute or through the order of its Board of Railroad Commission, requires a railroad to establish a station at a particular place on the line of its road, such statute or order is not to be overthrown by the courts as unreasonable merely because the establishing or maintenance of such station would prove unremunerative. Regard is to be had to the financial ability of the railroad, in view of its entire business, to establish and maintain such station. Morgan's La. & T. R. & S. S. Co. v. Railroad Commission, 109 La. 247, 33 So. 24. See In Matter of Auburn & W. R. Co., 37 App. Div. 162, 55 N. Y. Supp. 895.

[18] Section 36, p. 37.

or new structure or structures, the Commission shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured.[14]

§ 219. Power of Commission to Order Changes in Time Schedule and Running Additional Cars and Trains.—Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that any railroad corporation or street railroad corporation does not run a sufficient number of trains or cars, or possess or operate sufficient motive power, reasonably to accommodate the traffic, passenger or freight, transported by or offered for transportation to it, or does not run its trains or cars with sufficient frequency or at a reasonable or proper time having regard to safety, or does not stop the same at proper places, or does not run any train or trains, car or cars, upon a reasonable time schedule for the run, the Commission shall have power to make an order directing any such railroad corporation or street railroad corporation to increase the number of its trains or of its cars or its motive power or to change the time for starting its trains or cars or to change the time schedule for the run of any train or car, or to change the stopping-place or places thereof, or to make any other order that the Commission may determine to be reasonably necessary to accommodate and transport the traffic, passenger or freight, transported or offered for transportation.[15]

[14] Ib.

[15] Section 37, p. 37.

A railroad is under governmental control, though such control must be exercised with due regard to the constitutional guaranties for the protection of its property. Smyth v. Ames, 169 U. S. 466, 18 Sup. Ct. 418, 42 L. ed. 819; see Louisville & N. R. Co. v. Kentucky, 183 U. S. 503, 22 Sup. Ct. 95, 46 L. ed. 298; Railroad Connection Cases (North

§ 220. Track Connections.—Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that the public convenience and necessity would be subserved by having connections made between the tracks of any two or more railroad

Carolina Corporation Commission v. Atlantic Coast Line R. Co.), 137 N. C. 1, 49 S. E. 191, 115 Am. St. Rep. 636; Atlantic Coast Line v. North Carolina Corporate Commission, 206 U. S. 1, 27 Sup. Ct. 585, 51 L. ed. 933.

State regulation compelling passenger train service between the termini of a branch line within the state and the state line is a reasonable exercise of police power of the state and is not an infringement upon the right of ownership, and does not operate as a burden upon interstate commerce. Missouri Pac. R. Co. v. Kansas, 216 U. S. 262, 30 Sup. Ct. 330, 54 L. ed. 472.

See other authorities, Dig. U. S. Rep. (L. ed.), tit. "Carriers," III.

A state Board of Railroad Commissioners may promulgate an order requiring carriers to operate separate passenger service within the state, in the exercise of police power to enforce local regulation necessary for the convenience, safety and comfort of the public; it is not invalid on the ground of an attempt to regulate interstate commerce, and it does not directly cast a burden upon such commerce. State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 92 Pac. 606.

Order of Commission entered on finding that railroads should operate double daily service between given points within a state, and that said service should be so rendered as to make connections at junctions or points as nearly as possible, sustained. St. Louis & S. F. R. Co. v. Williams, 25 Okl. 662, 107 Pac. 428.

Order of a state Board of Railroad Commissioners requiring a corporation to operate separate passenger trains is not unreasonable on its face. State ex rel. Taylor v. No. Pac. R. Co., 76 Kan. 467, 92 Pac. 606.

As to right of Commission to require railroad to operate passenger trains separate from mixed trains for the accommodation of the public, see People v. St. L., A. & T. H. R. Co., 176 Ill. 512, 52 N. E. 292, 35 L. R. A. 656; State ex rel. Taylor v. No. Pac. R. Co., 76 Kan. 467, 492, 92 Pac. 606.

"Extent to which legislature shall extend its control and regulation of common carriers lies in the discretion of the legislature alone, except that it must, of course, be reasonable and just, and must not deprive the owners of a fair and reasonable rate upon their investment." State ex rel. Taylor v. Northern Pacific R. Co., 76 Kan. 467, 489, 92 Pac. 606. See State v. Johnson, 61 Kan. 803, 60 Pac. 1068, 49 L. R. A. 662.

Order of Railroad Commission requiring company to furnish additional facilities for the accommodation of the public will be enforced where necessary, notwithstanding the fact that it will occasion expense to

or street railroad corporations, so that cars may readily be transferred from one to the other, at any of the points hereinafter in this section specified, the Commission may order any two or more such corporations owning, controlling, operating or managing tracks of the same gauge to make physical connections at any and all crossings, and at all points where a railroad or street railroad shall begin or terminate or run near to any other railroad or street railroad.[16]

the company and even loss of profit. State ex rel. Taylor v. Missouri-Pac. R. Co., 76 Kan. 467, 501, 92 Pac. 606. See Atlantic Coast Line v. North Carolina Corporate Commission, 206 U. S. 1, 27 Sup. Ct. 581, 51 L. ed. 933; Wisconsin, M. & Pac. R. Co. v. Jacobson, 197 U. S. 287, 21 Sup. Ct. 115, 45 L. ed. 194.

Order of commissioners requiring carrier to operate separate passenger trains, held not to be unreasonable upon its face. State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 92 Pac. 606.

Separate compartments for white and black passengers, required by the state of Mississippi, when applied to that portion of an interstate road within the state, was held not to place a burden upon interstate commerce, although it requires the railroad company to go to the expense of providing separate accommodations for use within the state, which, when the same road crosses into another state, held not required. Louisville R. Co. v. Mississippi, 133 U. S. 587, 10 Sup. Ct. 348, 33 L. ed. 784.

As to carrying negro passengers in separate coaches, see chapter VII, footnote 3.

[16] Section 38, p. 37.

Statutory provision requiring railroad companies to make such physical connection, transfers and switch facilities as may be ordered by the Corporation Commission, and empowering said Commission, on complaint on its own motion, to require such companies to make such physical connection and establish and maintain union depots, etc., as the public interest may require, is a valid exercise of legislative power. Mo. O. & G. R. Co. v. State (Okl.), 119 Pac. 117.

Under statute requiring railroad to make physical connection, etc., at such points as may be ordered by the Commission, an order of the Commission requiring the establishment of a union depot will be enforced, notwithstanding the added cost and actual delay in entering trains. Mo. O. & G. R. Co. v. State (Okl.), 119 Pac. 117.

The state regulation requiring all railroads, at all points of connecting, crossing or intersection with roads of other railroads, to establish and maintain suitable platforms and station-houses for the convenience of passengers desiring to transfer from one road to another, and for

§ 221. —— Cities and Towns.—After the necessary franchise or permit has been secured from the city and county, or city or town, the Commission may likewise order such physical connection, within such

the transfer of passengers, baggage or freight whenever the same shall be ordered by the Railroad Commission, and shall, when ordered by such Commission, keep such depot or passenger-house warmed, lighted and open a reasonable time before the arrival and until after the departure of all trains carrying passengers; and that said railroads shall stop all trains at such depots for the transfer of passengers, baggage and freight, when so ordered by the Commission, is in nowise a regulation of commerce within the meaning of the constitution. Wisconsin Co. v. Jacobson, 197 U. S. 287, 295, 21 Sup. Ct. 115, 118, 45 L. ed. 194; Southern Pac. Co. v. Campbell, 189 Fed. 696.

Constitution of Kentucky (section 213) requires all railroad companies organized under the laws of that state or doing a railway business therein to receive, transfer, deliver and switch empty or loaded cars, and to move, transport, receive, load or unload all the freight in carloads or less quantities coming to or going from any railroad, transfer or belt line, with equal promptness and dispatch and without any discrimination; and shall receive, deliver, transfer and transport all freight as above set forth from and to any point where there is a physical connection between the tracks of such railroad companies. This provision of the constitution came under consideration in the case of Central Stockyards Co. v. Louisville & N. R. Co., 118 Fed. 113, 55 C. C. A. 63, 63 L. R. A. 213.

In relation to the power of the state to compel a railroad company to transfer cars of livestock to a connecting road at a point of connection within the state where the shipment was received in another state and was rendered thereby interstate commerce, the supreme court passed over the constitutional question and disposed of the case on the ground that a railroad having its own stockyards in a city cannot be required to accept livestock from other states for delivery at the stockyards of another railroad company in the same city. Central Stockyards v. L. & N. R. Co., 192 U. S. 568, 24 Sup. Ct. 339, 48 L. ed. 565.

In a later case, however, the supreme court held that the Kentucky constitution as construed by the courts of that state (Louisville & N. R. Co. v. Central Stockyards Co., 133 Ky. 148, 97 S. W. 778), requiring a delivery and transfer by a railroad company by its own cars, was a taking of property without due process of law, and therefore contrary to the Fourteenth Amendment of the national constitution. Louisville & N. R. Co. v. Stockyards Co., 212 U. S. 132, 29 Sup. Ct. 246, 53 L. ed. 44.

city and county, or city or town, between two or more railroads which enter the limits of the same.[17]

§ 222. —— Expense of Connections.—The Commission shall by order direct whether the expense of the connections referred to in this section shall be borne jointly or otherwise.[18]

§ 223. Switch and Spur Connections.—Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that application has been made by any corporation or person to a railroad corporation for a connection or spur as provided in section 25 of this act, and that the railroad corporation has refused to provide such connection or spur and that the applicant is entitled to have the same provided for him under said section 25, the Commission shall make an order requiring the providing of such connection or spur and the maintenance and use of the same upon reasonable terms which the Commission shall have the power to prescribe.[19]

§ 224. —— Any Corporation or Person Entitled to Connect—Division of Primary Expense.—Whenever any such connection or spur has been so provided, any corporation or person shall be entitled to connect with the private track, tracks or railroad thereby connected with the railroad of the railroad corporation and to use the same or to use the spur so provided upon payment to the party or parties incurring the primary expense of such private track, tracks or railroad, or the connection therewith or of such spur, of a reasonable proportion of the cost thereof to be determined by the Commission after notice to the interested parties and a hearing thereon; provided, that such con-

[17] Section 38, p. 38.
[18] Ib.
[19] Section 39 (a), p. 38.

nection and use can be made without unreasonable interference with the rights of the party or parties incurring such primary expense.[20]

§ 225. —— Interchange Switching to Industrial Track.—The Commission shall likewise have the power to require one railroad corporation to switch to private spurs and industrial tracks upon its own railroad the cars of a connecting railroad corporation and to prescribe the terms and compensation for such service.[21]

§ 226. Telephone and Telegraph Line—Physical Connection.—Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that a physical connection can reasonably be made between the lines of two or more telephone corporations or two or more telegraph corporations whose lines can be made to form a continuous line of communication, by the construction and maintenance of suitable connections for the transfer of messages or conversations, and that public convenience and necessity will be subserved thereby, or shall find that two or more telegraph or telephone corporations have failed to establish joint rates, tolls or charges for service by or over their said lines, and that joint rates, tolls or charges ought to be established, the Commission may, by its order, require that such connection be made, except where the purpose of such connection is primarily to secure the transmission of local messages or conversations between points within the same city and county, or city or town, and that conversations be transmitted and messages transferred over such connection under such rules and regulations as the Commission may establish, and prescribe through

[20] Ib.

[21] Section 39 (b), p. 38.

lines and joint rates, tolls and charges to be made, and to be used, observed and in force in the future.[22]

§ 227. **Apportionment of Expense and Division of Joint Rates.**—If such telephone or telegraph corporations do not agree upon the division between them of the cost of such physical connection or connections or the division of the joint rates, tolls or charges established by the Commission over such through lines, the Commission shall have authority, after further hearing, to establish such division by supplemental order.[23]

§ 228. **Use of Joint Facilities.**—Whenever the Commission, after a hearing had upon its own motion or upon complaint of a public utility affected, shall find that public convenience and necessity require the use by one public utility of the conduits, subways, tracks, wires, poles, pipes or other equipment, or any part thereof, on, over, or under any street or highway, and belonging to another public utility, and that such use will not result in irreparable injury to the owner or other users of such conduits, subways, tracks, wires, poles, pipes or other equipment or in any substantial detriment to the service, and that such public utilities have failed to agree upon such use or the terms and conditions or compensation for the same, the Commission may by order direct that such use be permitted, and prescribe a reasonable compensation and reasonable terms and conditions for the joint use.[24]

§ 229. —— **Liability for Damages from Use.**—If such use be directed, the public utility to whom the use is permitted shall be liable to the owner or other users of such conduits, subways, tracks, wires, poles, pipes or other equipment for such damage as may result

[22] Section 40, p. 38.
[23] Ib., p. 39.
[24] Section 41, p. 39.

therefrom to the property of such owner or other users thereof.[25]

§ 230. Health and Safety — Safety Devices.—The Commission shall have power, after a hearing had upon its own motion or upon complaint, by general or special orders, rules or regulations, or otherwise, to require every public utility to maintain and operate its line, plant, system, equipment, apparatus, tracks and premises in such manner as to promote and safeguard the health and safety of its employees, passengers, customers, and the public, and to this end to prescribe, among other things, the installation, use, maintenance and operation of appropriate safety or other devices or appliances, including interlocking and other protective devices at grade crossings or junctions and block or other systems of signaling, to establish uniform or other standards of equipment, and to require the performance of any other act which the health or safety of its employees, passengers, customers or the public may demand.[26]

[25] Ib.

Safety appliance required on car by state regulation does not require such appliance on car engaged in interstate commerce on connection of such car and a car subject to state regulation. See Louisville & N. R. Co. v. W. U. S., 186 Fed. 280.

State regulation regarding the heating of steam passenger cars and requiring guards and guard-posts on railway bridges and trestles was held to be valid in New York. N. H. R. Co. v. New York, 165 U. S. 628, 17 Sup. Ct. 418, 41 L. ed. 853.

State regulation requiring engineers on trains operating within the state to first undergo an examination before obtaining a license from the state board appointed for that purpose, the object of the act being to protect the traveling public from injury and loss by reason of color blindness in such engineer, is a constitutional and valid exercise of its police power by the state. Smith v. Alabama, 124 U. S. 461, 8 Sup. Ct. 564, 31 L. ed. 508, 1 Int. Com. Rep. 804; Nashville, C. & St. L. R. Co. v. Alabama, 128 U. S. 96, 9 Sup. Ct. 28, 32 L. ed. 352, 2 Int. Com. Rep. 238.

[26] Section 42, p. 39.

§ 231. Grade Crossings—Prohibition of Future.—No public road, highway or street shall hereafter be constructed across the track of any railroad corporation at grade, nor shall the track of any railroad corporation be constructed across a public road, highway or street at grade, nor shall the track of any railroad corporation be constructed across the track of any other railroad or street railroad corporation at grade, nor shall the track of a street railroad corporation be constructed across the track of a railroad corporation at grade, without having first secured the permission of the Commission; provided, that this subsection shall not apply to the replacement of lawfully existing tracks. The Commission shall have the right to refuse its permission or to grant it upon such terms and conditions as it may prescribe.[27]

§ 232. —— Determining Manner of — Abolishing Established.—The Commission shall have the exclusive power to determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use and protection of each crossing of one railroad by another railroad or street railroad, and of a street railroad by a railroad, and of each crossing of a public road or highway by a railroad or street railroad and of a street by a railroad or *vice versa*, subject to the provisions of section 2694 of the Political Code, so far as applicable, and to alter or abolish any such crossing, and to require where, in its judgment, it would be practicable, a separation of grades at any such crossing heretofore or hereafter established and to prescribe the terms upon which such separation shall be made and the proportions in which the expense of the alteration or abolition of such crossings or the separation of such grades shall be divided between the railroad or street

[27] Section 43 (a), p. 40.

railroad corporations affected or between such corporations and the state, county, municipality or other public authority in interest.[28]

§ 233. **Investigation of Accidents—Orders and Recommendations.**—The Commission shall investigate the cause of all accidents occurring within this state upon the property of any public utility or directly or indirectly arising from or connected with its maintenance or operation, resulting in loss of life or injury to person or property and requiring, in the judgment of the Commission, investigation by it, and shall have the power to make such order or recommendation with respect thereto as in its judgment may seem just and reasonable.[29]

§ 234. —— **Orders, etc., nor Report Filed With, to be Admitted in Evidence.**—Provided, that neither the order or recommendation of the Commission nor any accident report filed with the Commission shall be admitted as evidence in any action for damages based on or arising out of the loss of life, or injury to person or property, in this section referred to.[30]

§ 235. —— **Report to be Filed With Commission.** Every public utility is hereby required to file with the Commission, under such rules and regulations as the Commission may prescribe, a report of each accident so occurring of such kinds or classes as the Commission may from time to time designate.[31]

§ 236. **Rules to Expedite Traffic—Power of Commission to Provide.**—The Commission shall have power to provide by proper rules and regulations the time

[28] Section 43 (b), p. 40.
[29] Section 44, p. 40.
[30] Ib.
[31] Ib.

within which all railroad corporations shall furnish, after demand therefor, all cars, equipment and facilities necessary for the handling of freight in carload and less than carload lots, the time within which consignors or persons ordering cars shall load the same, and the time within which consignees or persons to whom freight may be consigned shall unload and discharge the same and receive freight from the freight-rooms, and to provide penalties to be paid for failure on the part of the railroad corporations, consignors and consignees to conform to such rules.[82]

§ 237. —— Demurrage Charges.—Charges for demurrage shall be uniform so that the same penalty shall be paid by both shipper or consignee and railroad corporation for an equal number of cars for each day for which demurrage is charged.[83]

§ 238. Express and Telegraph Rules and Regulations.—The Commission shall also have power to provide the time within which express packages shall be received, gathered, transported and delivered at destination, and the limits within which express packages shall be gathered and distributed and telegraph and telephone messages delivered without extra charge.[84]

§ 239. Power of Commission as to Service, etc., of Public Utilities.—The Commission shall have power, after hearing had upon its own motion or upon complaint, to ascertain and fix just and reasonable standards, classifications, regulations, practices, measurements or service to be furnished, imposed, observed and followed by all electrical, gas and water cor-

[82] Section 45 (a), p. 40.
[83] Ib., p. 41.
[84] Section 45 (b), 41.

porations; to ascertain and fix adequate and serviceable standards for the measurement of quantity, quality, pressure, initial voltage or other condition pertaining to the supply of the product, commodity or service furnished or rendered by any such public utility; to prescribe reasonable regulations for the examination and testing of such product, commodity or service and for the measurement thereof; to establish reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for measurements; and to provide for the examination and testing of any and all appliances used for the measurement of any product, commodity or service of any such public utility.[25]

§ 240. —— **Power of Commissioners, etc., to Enter Premises, etc.—Right to be Present at Test.**—The commissioners and their officers and employees shall have power to enter upon any premises occupied by any public utility, for the purpose of making the examinations and tests and exercising any of the other powers provided for in this act, and to set up and use on such premises any apparatus and appliances necessary therefor. The agents and employees of such public utility shall have the right to be present at the making of such examinations and tests.[26]

§ 241. —— **Consumers and Users may have Appliances Tested.** — Any consumer or user of any product, commodity or service of a public utility may have any appliance used in the measurement thereof tested upon paying the fees fixed by the Commission.[27]

§ 242. —— **Commission may Prescribe Fees for Testing.**—The Commission shall establish and fix rea-

[25] Section 46 (a), p. 41.
[26] Section 46 (b), p. 41.
[27] Section 46 (c), p. 41.

sonable fees to be paid for testing such appliances on the request of the consumer or user, the fee to be paid by the consumer or user at the time of his request, but to be paid by the public utility and repaid to the consumer or user if the appliance is found defective or incorrect to the disadvantage of the consumer or user, under such rules and regulations as may be prescribed by the Commission.[38]

§ 243. Valuation of Property.—The Commission shall have power to ascertain the value of the property of every public utility in this state and every fact which in its judgment may or does have any bearing on such value.[39]

§ 244. —— Revaluation, etc., Extension, etc.—The Commission shall have power to make revaluations from time to time and to ascertain all new construction, extensions and additions to the property of every public utility.[40]

§ 245. Uniform System of Accounting—Commission may Prescribe.—The Commission shall have power to establish a system of accounts to be kept by the public utilities subject to its jurisdiction, or to classify said public utilities and to establish a system of accounts for each class, and to prescribe the manner in which such accounts shall be kept. It may also in its discretion prescribe the forms of accounts, records and memoranda to be kept by such public utilities, including the accounts, records and memoranda of the movement of traffic as well as the receipts and expenditures of moneys, and any other forms, records and memoranda which in the judgment of the Commission

[38] Ib.
[39] Section 47, p. 42.
[40] Ib.

may be necessary to carry out any of the provisions of this act.[41]

§ 246. —— Forms in Addition to Those of Commerce Commission.—The system of accounts established by the Commission and the forms of accounts, records and memoranda prescribed by it shall not be inconsistent, in the case of corporations subject to the provisions of the act of Congress entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and the acts amendatory thereof and supplementary thereto, with the systems and forms from time to time established for such corporations by the Interstate Commerce Commission, but nothing herein contained shall affect the power of the Commission to prescribe forms of accounts, records and memoranda covering information in addition to that required by the Interstate Commerce Commission.[42]

§ 247. —— Unlawful to Keep Records and Accounts Otherwise Than as Prescribed.—The Commission may, after hearing had upon its own motion or upon complaint, prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited. Where the Commission has prescribed the forms of accounts, records or memoranda to be kept by any public utility for any of its business, it shall thereafter be unlawful for such public utility to keep any accounts, records or memoranda for such business other than those so prescribed, or those prescribed by or under the authority of any other state or of the United States, excepting such accounts, records or memoranda as shall be explanatory of and sup-

[41] Section 48, p. 42.

[42] Ib.

plemental to the accounts, records or memoranda prescribed by the Commission.[43]

§ 248. Depreciation Accounts.—The Commission shall have power, after hearing, to require any or all public utilities to carry a proper and adequate depreciation account in accordance with such rules, regulations and forms of account as the Commission may prescribe.[44]

§ 249. —— Rates of Depreciation to be Fixed by Commission.—The Commission may, from time to time, ascertain and determine and by order fix the proper and adequate rates of depreciation of the several classes of property of each public utility.[45]

§ 250. —— Public Utilities to Conform Depreciation to Rates of as Fixed.—Each public utility shall conform its depreciation accounts to the rates so ascertained, determined and fixed, and shall set aside the moneys so provided for out of earnings and carry the same in a depreciation fund and expend such fund only for such purposes and under such rules and regulations, both as to original expenditure and subsequent replacement as the Commission may prescribe. The income from investments of moneys in such fund shall likewise be carried in such fund.[46]

§ 251. New Construction—Certificate from Commission.—No street railroad corporation, gas corpora-

[43] Ib.

[44] Section 49, p. 42.

Depreciation in value of a public utility,—as a waterworks plant,—and not the value of the service rendered to consumers due to a diminution of supply,—as of a quantity of water from a long-continued drought from which the surrounding country has suffered since the fixing of the rates,—may be considered in determining the reasonableness of the rates as fixed. San Diego L. & T. Co. v. Jasper, 189 U. S. 439, 23 Sup. Ct. 571, 47 L. ed. 892, affirming 110 Fed. 702.

[45] Section 49, p. 42.

[46] Ib.

tion, electrical corporation, telephone corporation or water corporation shall henceforth begin the construction of a street railroad, or of a line, plant or system, or of any extension of such street railroad, or line, plant, or system, without having first obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such construction.[47]

§ 252. —— Certificate not Required When.—Provided, that this section shall not be construed to require any such corporation to secure such certificate for an extension within any city and county or city or town within which it shall have theretofore lawfully commenced operations, or for an extension into territory either within or without a city and county or city or town, contiguous to its street railroad, or line, plant or system, and not theretofore served by a public utility of like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business.[48]

§ 253. —— Interference With Other Public Utilities.—And provided, further, that if any public utility, in constructing or extending its line, plant, or system, shall interfere or be about to interfere with the operation of the line, plant or system of any other public utility, already constructed, the Commission, on complaint of the public utility claiming to be injuriously affected, may, after hearing, make such order and prescribe such terms and conditions for the location of the lines, plants or systems affected as to it may seem just and reasonable.[49]

[47] Section 50 (a), p. 43.
[48] Ib.
[49] Ib.

§ 254. —— **Franchises and Privileges.**—No public utility of a class specified in subsection (*a*) hereof shall henceforth exercise any right or privilege under any franchise or permit hereafter granted, or under any franchise or permit heretofore granted but not heretofore actually exercised, or the exercise of which has been suspended for more than one year, without first having obtained from the Commission a certificate that public convenience and necessity require the exercise of such right or privilege.[50]

§ 255. —— **Right to Proceed Under Former Franchises and Privileges, When.**—Provided, that when the Commission shall find, after hearing, that a public utility has heretofore begun actual construction work and is prosecuting such work, in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking, under any franchise or permit heretofore granted but not heretofore actually exercised, such public utility may proceed, under such rules and regulations as the Commission may prescribe, to the completion of such work, and may, after such completion, exercise such right or privilege.[51]

§ 256. —— **Invalid Right or Privilege not Validated.**—And provided, further, that this section shall not be construed to validate any right or privilege now invalid or hereafter becoming invalid under any law of this state.[52]

§ 257. —— **Certified Copies of Articles, etc., to be Filed.**—Before any certificate may issue, under this section, a certified copy of its articles of incorporation

[50] Section 50 (b), p. 48.
[51] Ib.
[52] Ib.

or charter, if the applicant be a corporation, shall be filed in the office of the Commission.[53]

§ 258. —— Evidence of Franchises, etc., to be Filed.—Every applicant for a certificate shall file in the office of the Commission such evidence as shall be required by the Commission to show that such applicant has received the required consent, franchise or permit of the proper county, city and county, municipal or other public authority.[54]

§ 259. —— Power to Issue or Review Certificate.—The Commission shall have power, after hearing, to issue said certificate, as prayed for, or to refuse to issue the same, or to issue it for the construction of a portion only of the contemplated street railroad, line, plant or system, or extension thereof, or for the partial exercise only of said right or privilege, and may attach to the exercise of the rights granted by said certificate such terms and conditions as in its judgment the public convenience and necessity may require.[55]

§ 260. —— Franchises, etc., yet to be Secured—Order for and Certificate When Secured.—If a public utility desires to exercise a right or privilege under a franchise or permit which it contemplates securing, but which has not as yet been granted to it, such public utility may apply to the Commission for an order preliminary to the issue of the certificate. The Commission may thereupon make an order declaring that it will thereafter, upon application, under such rules and regulations as it may prescribe, issue the desired certificate, upon such terms and conditions as it may designate, after the public utility has obtained the contemplated franchise or permit. Upon the presentation

[53] Section 50 (c), p. 43.
[54] Ib., p. 44.
[55] Ib.

to the Commission of evidence satisfactory to it that such franchise or permit has been secured by such public utility, the Commission shall thereupon issue such certificate.[56]

§ 261. Transfer of Property, Franchises, etc.—Order Authorizing.—No railroad corporation, street railroad corporation, pipe-line corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation or water corporation shall henceforth sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant or system, necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor by any means whatsoever, direct or indirect, merge or consolidate its railroad, street railroad, line, plant or system, or franchises or permits or any part thereof, with any other public utility, without having first secured from the Commission an order authorizing it so to do.[57]

§ 262. —— Sale, Lease, etc., Without Order of Authorization Void.—Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the Commission authorizing the same shall be void.[58]

§ 263. —— Permission or Approval not to Validate Void or Lapsed Franchises, etc.—The permission and approval of the Commission to the exercise of a franchise or permit under section 50 of this act, or the sale, lease, assignment, mortgage or other disposition or encumbrance of a franchise or permit under this section shall not be construed to revive or validate any

[56] Ib.
[57] Section 51 (a), p. 44.
[58] Ib.

lapsed or invalid franchise or permit, or to enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or to waive any forfeiture.[59]

§ 264. —— **Construction to be Given Section.**— Nothing in this subsection contained shall be construed to prevent the sale, lease or other disposition by any public utility of a class designated in this subsection of property which is not necessary or useful in the performance of its duties to the public, and any sale of its property by such public utility shall be conclusively presumed to have been of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser of such property in good faith for value.[60]

§ 265. —— **Stock of Other Utility—Not to be Purchased or Held Without Authority of Commission.**— No public utility shall hereafter purchase or acquire, take or hold, any part of the capital stock of any other public utility, organized or existing under or by virtue of the laws of this state, without having been first authorized to do so by the Commission.[61]

§ 266. **Assignment, etc., of Stock Without Authorization, Void.**—Every assignment, transfer, contract or agreement for assignment or transfer of any stock by or through any person or corporation to any corporation or otherwise in violation of any of the provisions of this section shall be void and of no effect, and no such transfer shall be made on the books of any public utility.[62]

§ 267. —— **Holding of Stock, etc., Heretofore Acquired, not Affected.**—Nothing herein contained shall

[59] Ib.
[60] Ib.
[61] Section 51 (b), p. 45.
[62] Ib.

be construed to prevent the holding of stock heretofore lawfully acquired.[63]

§ 268. Power to Issue Stock, Bonds, etc.—Special Privileges—Control of.—The power of public utilities to issue stocks and stock certificates, and bonds, notes and other evidences of indebtedness and to create liens on their property situated within this state is a special privilege, the right of supervision, regulation, restriction and control of which is and shall continue to be vested in the state, and such power shall be exercised as provided by law and under such rules and regulations as the Commission may prescribe.[64]

[63] Ib.

[64] Section 52 (a), p. 45.

The terms and conditions upon which railroad companies may be created, the powers and capital stock they may have, the purposes for which they may increase their capital stock, and the limitations and conditions to be imposed upon the right to such increase, are exclusively matters for legislative action which cannot be delegated. The state having created such corporations and conferred upon them, for public purposes, great and extraordinary powers and franchises, including the sovereign power of eminent domain, and the right to levy tolls or taxes upon those who use for traffic or travel the modern highways and railroads. It logically follows that the legislature has the undoubted right to enact statutes regulating the increase and disposition of their capital stock. In the exercise of this right it may pass a statute providing generally for what purposes and upon what terms, conditions, and limitations an increase of capital stock may be made, and confer upon the Commission the administrative duty of supervising any proposed increase of stock. It may also delegate to the Commission the duty of finding the facts in each particular case, and authorize and require it, if it find the existence of facts that bring the case within the statute, to allow the proposed increase; otherwise to refuse it. Any statute, however, which attempts to authorize the Commission in its judgment to allow an increase of the capital stock of the corporation for such purposes and on such terms or conditions as it may deem advisable, would be a delegation of legislative power and void. State v. Great Northern R. Co., 100 Minn 445, 111 N. W. 289, affirmed, 216 U. S. 206, 54 L. ed. 446.

Even where an act or charter can be construed as conferring upon a corporation the power to issue stock without limit, nevertheless the legislature would have the right to prescribe such reasonable regulations for the exercise of the right to issue stock as might be necessary to prevent fraud in the issuing of fictitious stock and to protect the public

§ 269. —— Purpose for Which Bond, etc., may be Issued.—A public utility may issue stocks and stock certificates, and bonds, notes and other evidences of indebtedness payable at periods of more than twelve months after the date thereof, for the following purposes and no others, namely, for the acquisition of property, or for the construction, completion, extension or improvement of its facilities, or for the improvement or maintenance of its service, or for the discharge or lawful refunding of its obligations, or for the reimbursement of moneys actually expended from income or from any other moneys in the treasury of the public utility not secured by or obtained from the issue of stocks or stock certificates, or bonds, notes or other evidences of indebtedness of such public utility, within five years next prior to the filing of an application with the Commission for the required authorization, for any of the aforesaid purposes except maintenance of service and replacements, in cases where the applicant shall have kept its accounts and vouchers for such expenditures in such manner as to enable the Commission to ascertain the amount of moneys so expended and the purposes for which such expenditure was made.[65]

§ 270. —— Power of Commission on Authorizing Bonds.—Provided, that such public utility, in addition to the other requirements of law, shall first have secured from the Commission an order authorizing such issue and stating the amount thereof and the purpose or purposes to which the issue or the proceeds thereof are to be applied, and that, in the opinion of the Commission, the money, property or labor to be procured or paid for by such issue is reasonably re-

from the consequences thereof; because the police power of the state cannot be abdicated. State v. St. Paul M. & M. R. Co., 98 Minn. 380, 118 N. W. 261; State v. Great Northern R. Co., 100 Minn. 445, 111 N. W. 289.

[65] Section 52 (b), p. 45.

quired for the purpose or purposes specified in the order, and that, except as otherwise permitted in the order in the case of bonds, notes or other evidences of indebtedness, such purpose or purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.[66]

§ 271. —— Hearing to Determine Whether to Authorize Bond Issue, etc.—To enable it to determine whether it will issue such order, the Commission shall hold a hearing and may make such additional inquiry or investigation, and examine such witnesses, books, papers, documents and contracts and require the filing of such data as it may deem of assistance.[67]

§ 272. —— Commission to Fix and Determine Amount of Issue.—The Commission may by its order grant permission for the issue of such stocks or stock certificates, or bonds, notes or other evidences of indebtedness in the amount applied for, or in a lesser amount, or not at all, and may attach to the exercise of its permission such condition or conditions as it may deem reasonable and necessary.[68]

§ 273. —— Authorizing Bond Issue, etc., Greater or Less Than Authorized Stock.—The Commission may authorize issues of bonds, notes or other evidences of indebtedness, less than, equivalent to or greater than the authorized or subscribed capital stock of a public utility corporation, and the provisions of section 309 and 456 of the Civil Code of this state, in so far as they contain inhibitions against the creation by corporations of indebtedness, evidenced by bonds, notes or otherwise, in excess of their total authorized or sub-

[66] Ib.
[67] Ib., p. 46.
[68] Ib.

scribed capital stock shall have no application to public utility corporations.[69]

§ 274. —— Application of Proceeds of Bond Issue, etc., to be Made as Commission Directs.—No public utility shall, without the consent of the Commission, apply the issue of any stock or stock certificate, or bond, note or other evidence of indebtedness, or any part thereof, or any proceeds thereof, to any purpose not specified in the Commission's order, or to any purpose specified in the Commission's order in excess of the amount authorized for such purpose, or issue or dispose of the same on any terms less favorable than those specified in such order, or a modification thereof.[70]

§ 275. —— Notes may be Issued, Without Authorization, When.—A public utility may issue notes, for proper purposes and not in violation of any provision of this act or any other act, payable at periods of not more than twelve months after the date of issuance of the same, without the consent of the Commission, but no such note shall, in whole or in part, be refunded by any issue of stocks or stock certificates, or of bonds, notes of any term or character or any other evidence of indebtedness, without the consent of the Commission.[71]

§ 276. —— Capitalization of Franchises, etc., not to be Authorized.—The Commission shall have no power to authorize the capitalization of the right to be a corporation, or to authorize the capitalization of any franchise or permit whatsoever or the right to own, operate or enjoy any such franchise or permit, in excess of the amount (exclusive of any tax or annual

[69] Ib.
[70] Ib.
[71] Ib.

charge) actually paid to the state or to a political subdivision thereof as the consideration for the grant of such franchise, permit or right; nor shall any contract for consolidation or lease be capitalized, nor shall any public utility hereafter issue any bonds, notes or other evidences of indebtedness against or as a lien upon any contract for consolidation or merger.[72]

§ 277. —— Disposition of Proceeds of Bond Issue, etc., to be Accounted for.—The Commission shall have the power to require public utilities to account for the disposition of the proceeds of all sales of stocks and stock certificates, and bonds, notes and other evidences of indebtedness, in such form and detail as it may deem advisable, and to establish such rules and regulations as it may deem reasonable and necessary to insure the disposition of such proceeds for the purpose or purposes specified in its order.[73]

§ 278. —— Issue of Bonds, Stock, etc., Without Authorization, Void—Effect of Failure to Authorize.—All stock and every stock certificate, and every bond, note or other evidence of indebtedness, of a public utility, issued without an order of the Commission authorizing the same then in effect shall be void, and likewise all stock and every stock certificate, and every bond, note or other evidence of indebtedness, of a public utility, issued with the authorization of the Commission, but not conforming in its provisions to the provisions, if any, which it is required by the order of authorization of the Commission to contain, shall be void; but no failure in any other respect to comply with the terms or conditions of the order of authorization of the Commission shall render void any stock or stock certificate, or any bond, note or other evidence of in-

[72] Ib.
[73] Section 52 (c), p. 46.

debtedness, except as to a corporation or person taking the same otherwise than in good faith and for value and without actual notice.[74]

§ 279. —— **Penalty for Issuing Bonds, etc., Without Authorization, and for Failure to Apply Proceeds as Directed.**—Every public utility which, directly or indirectly, issues or causes to be issued, any stock or stock certificate, or bond, note or other evidence of indebtedness, in nonconformity with the order of the Commission authorizing the same, or contrary to the provisions of this act, or of the constitution of this state, or which applies the proceeds from the sale thereof, or any part thereof, to any purpose other than the purpose or purposes specified in the Commission's order, as herein provided, or to any purpose specified in the Commission's order in excess of the amount in said order authorized for such purpose, is subject to a penalty of not less than five hundred dollars nor more than twenty thousand dollars for each offense.[75]

§ 280. —— **Felony to Issue Bonds, Stock, etc., Without Authorization, or to Apply Otherwise Than as Directed.**—Every officer, agent or employee of a public utility, and every other person who knowingly authorizes, directs, aids in, issues or executes, or causes to be issued or executed, any stock or stock certificate, or bond, note or other evidence of indebtedness, in nonconformity with the order of the Commission authorizing the same, or contrary to the provisions of this act, or of the constitution of this state, or who, in any proceeding before the Commission, knowingly makes any false statement or representation or with knowledge of its falsity files or causes to be filed with the Commission any false statement or representation,

[74] Section 52 (d), p. 47.
[75] Section 52 (e), p. 47.

which said statement or representation so made, filed or caused to be filed may tend in any way to influence the Commission to make an order authorizing the issue of any stock or stock certificate, or any bond, note or other evidence of indebtedness, or which results in procuring from the Commission the making of any such order, or who, with knowledge that any false statement or representation was made to the Commission, in any proceeding, tending in any way to influence the Commission to make such order, issues or executes or negotiates, or causes to be issued, executed or negotiated any such stock or stock certificate, or bond, note or other evidence of indebtedness, or who, directly or indirectly, knowingly applies, or causes or assists to be applied the proceeds or any part thereof, from the sale of any stock or stock certificate, or bond, note or other evidence of indebtedness, to any purpose not specified in the Commission's order, or to any purpose specified in the Commission's order in excess of the amount authorized for such purpose, or who, with knowledge that any stock or stock certificate, or bond, note or other evidence of indebtedness, has been issued or executed in violation of any of the provisions of this act, negotiates, or causes the same to be negotiated, shall be guilty of a felony.[76]

§ 281. —— State not Obligated by Authorization of Bond Issue, etc.—No provision of this act, and no deed or act done or performed under or in connection therewith, shall be held or construed to obligate the state of California to pay or guarantee, in any manner whatsoever, any stock or stock certificate, or bond, note or other evidence of indebtedness, authorized, issued or executed under the provisions of this act.[77]

[76] Section 52 (f), p. 47.

[77] Section 52 (g), p. 48.

§ 282. —— Issue of Bonds, Stock, etc., After Act Takes Effect, Without Prior Authorization, Void.—All stocks and stock certificates, and bonds, notes and other evidences of indebtedness issued by any public utility after this act takes effect, upon the authority of any articles of incorporation or amendments thereto or vote of the stockholders or directors filed, taken or had, or other proceedings taken or had, previous to the taking effect of this act, shall be void, unless an order of the Commission authorizing the issue of such stocks or stock certificates, or bonds, notes or other evidences of indebtedness shall have been obtained from the Commission prior to such issue.[78]

§ 283. —— Power of Commission to Impose Conditions.—The Commission may by its order impose such condition or conditions as it may deem reasonable and necessary.[79]

[78] Section 52 (h), p. 48.
[79] Ib.

CHAPTER IX.

PROCEDURE BEFORE RAILROAD COMMISSION AND COURTS.

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§ 284. Rule for Hearings—Rules of Evidence.—All hearings and investigations before the Commission or any commissioner shall be governed by this act and by rules of practice and procedure to be adopted by the Commission, and in the conduct thereof neither the Commission nor any commissioner shall be bound by the technical rules of evidence.[1]

§ 285. —— Informalities not to Prejudice.—No informality in any proceeding or in the manner of taking testimony before the Commission or any commissioner shall invalidate any order, decision, rule or regulation made, approved or confirmed by the Commission.[2]

§ 286. Process—Power to Issue.—The Commission and each commissioner shall have power to issue writs of summons, subpoenas, warrants of attachment, warrants of commitment and all necessary process in proceedings for contempt, in the like manner and to the same extent as courts of record.[3]

[1] Extraordinary Session 1911, c. 14, § 53, p. 48.
[2] Ib.
[3] Section 54, p. 48.

§ 287. —— Extends to All Parts of State—Service of.—The process issued by the Commission, or any commissioner, shall extend to all parts of the state and may be served by any person authorized to serve process of courts of record, or by any person designated for that purpose by the Commission or a commissioner.[4]

§ 288. —— Compensation for Serving.—The person executing any such process shall receive such compensation as may be allowed by the Commission, not to exceed the fees now prescribed by law for similar services, and such fees shall be paid in the same manner as provided herein for payment of the fees of witnesses.[5]

§ 289. Witnesses — Documents and Papers.—The Commission and each commissioner shall have power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of the state.[6]

§ 290. —— Fees and Mileage—By Whom Paid.—Each witness who shall appear, by order of the Commission or a commissioner, shall receive for his attendance the same fees and mileage allowed by law to a witness in civil cases, which amount shall be paid by the party at whose request such witness is subpoenaed.[7]

§ 291. —— Subpoenaed by Commission—Payment of Fees and Mileage.—When any witness who has not

[4] Ib.
[5] Ib.
[6] Section 55 (a), p. 49.
[7] Ib.

been required to attend at the request of any party shall be subpoenaed by the Commission, his fees and mileage shall be paid from the funds appropriated for the use of the Commission in the same manner as other expenses of the Commission are paid.[8]

§ 292. —— May Demand Fees and Mileage—Exceptions.—Any witness subpoenaed except one whose fees and mileage may be paid from the funds of the Commission, may, at the time of service, demand the fee to which he is entitled for travel to and from the place at which he is required to appear, and one day's attendance.[9]

§ 293. —— Fees Demanded not Paid—Witness Need not Attend.—If such witness demands such fees at the time of service, and they are not at that time paid or tendered, he shall not be required to attend before the Commission or commissioner, as directed in the subpoena.[10]

§ 294. —— Fees may be Collected by Suit.—All fees or mileage to which any witness is entitled under the provisions of this section may be collected by action therefor instituted by the person to whom such fees are payable.[11]

§ 295. —— Traveling on Free Transportation not to Receive Mileage.—No witness furnished with free transportation shall receive mileage for the distance he may have traveled on such free transportation.[12]

§ 296. —— Court may Compel Attendance of, With Books and Papers.—The superior court in and

[8] Ib.
[9] Ib.
[10] Ib.
[11] Ib.
[12] Ib.

for the county, or city and county, in which any inquiry, investigation, hearing or proceeding may be held by the Commission or any commissioner shall have the power to compel the attendance of witnesses, the giving of testimony and the production of papers, including waybills, books, accounts and documents, as required by any subpoena issued by the Commission or any commissioner.[13]

§ 297. —— **Refusal to Attend, etc.—Report to Court, Conditions of.**—The Commission or the commissioner before whom the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, may report to the superior court in and for the county, or city and county, in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witness, or the production of said papers, and that the witness has been summoned in the manner prescribed in this act, and that the witness has failed and refused to attend or produce the papers required by the subpoena, before the Commission or commissioner, in the cause or proceeding named in the notice and subpoena, or has refused to answer questions propounded to him in the course of such proceeding, and ask an order of said court, compelling the witness to attend and testify or produce said papers before the Commission.[14]

§ 298. —— **Order of Court That Witness Appear —Service of Copy.**—The court, upon the petition of the Commission or such commissioner, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such

[13] Section 55 (b), p. 49.
[14] Ib.

order, the time to be not more than ten days from the date of the order, and then and there show cause why he has not attended and testified or produced said papers before the Commission. A copy of said order shall be served upon said witness.[15]

§ 299. —— **Failure to Obey Court's Order to Appear—Contempt.**—If it shall appear to the court that said subpoena was regularly issued by the Commission or a commissioner, the court shall thereupon enter an order that said witness appear before the Commission or said commissioner at the time and place fixed in said order, and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court.[16]

§ 300. —— **Failure to Appear—Remedy Provided Cumulative.**—The remedy provided in this subsection is cumulative, and shall not be construed to impair or interfere with the power of the Commission or a commissioner to enforce the attendance of witnesses and the production of papers, and to punish for contempt in the same manner and to the same extent as courts of record.[17]

§ 301. —— **Deposition of may be Taken—Compelling Attendance for, With Books, etc.**—The Commission or any commissioner or any party may, in any investigation or hearing before the Commission, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this state and to that end may compel the

[15] Ib.
[16] Ib., p. 50.
[17] Ib.

attendance of witnesses and the production of books, waybills, documents, papers and accounts.[18]

§ 302. —— No Person Shall be Excused from Testifying, etc.—But not to be Prosecuted.—No person shall be excused from testifying or from producing any book, waybill, document, paper or account in any investigation or inquiry by or hearing before the Commission or any commissioner, when ordered to do so, upon the ground that the testimony or evidence, book, waybill, document, paper or account required of him may tend to incriminate him or subject him to penalty or forfeiture, but no person shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which he shall, under oath have testified or produced documentary evidence.[19]

§ 303. —— No Person Testifying to be Exempt from Prosecution for Perjury.—Provided, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony.[20]

[18] Section 55 (c), p. 50.

[19] Section 55 (d), p. 50.

Immunity of witnesses, provided for in section 37 of the Oregon Railroad Commission Act (Laws 1907, c. 53, p. 59), extending only to natural persons, etc., is modeled upon act of Congress of June 30, 1906 (34 Stats. at Large, 798), for investigation of interstate rates—proceedings before Interstate Commerce Commission; section 47 of the Oregon Railroad Commission Act (Oregon Laws, 1907, c. 53, p. 93) is identical with section 21 of the Wisconsin Railroad Commission Act, and the deduction made is that the legislature intended by the Railroad Commission Act to regulate interstate traffic within the state only, and did not intend or seek to regulate interstate commerce in violation of the commerce clause of the federal constitution. Oregon R. & Nav. Co. v. Campbell, 173 Fed. 980.

[20] Section 55 (d), p. 50.

§ 304. —— Public Utilities not Given Immunity.—Nothing herein contained shall be construed as in any manner giving to any public utility immunity of any kind.[21]

§ 305. Paper Filed With Commission, Certified Copies to be Evidence.—Copies of all official documents and orders filed or deposited according to law in the office of the Commission, certified by a commissioner or by the secretary under the official seal of the Commission to be true copies of the originals, shall be evidence in like manner as the originals.[22]

§ 306. Orders, etc., of Commission—To be in Writing and Entered of Record.—Every order, authorization or certificate issued or approved by the Commission under any provision of sections 38, 39, 40, 41, 43, 50, 51 or 52 of this act shall be in writing and entered on the records of the Commission.[23]

§ 307. —— May be Recorded by County Recorder, When—Impart Notice.—Any such order, authorization or certificate, or a copy thereof, or a copy of the record of any such order, authorization or certificate, certified by a commissioner or by the secretary under the official seal of the Commission to be a true copy of the original order, authorization, certificate or entry,

[21] Ib.

[22] Section 56 (a), p. 50.

As to admissibility of public rates of classification and schedule as evidence, and their effect as evidence of the rates of charge fixed by the Commission, see Chicago, B. & Q. R. Co. v. Jones, 149 Ill. 361, 37 N. E. 247.

A schedule of rates certified by the secretary of the Commission is admissible in evidence under the Iowa statute of April 15, 1888, "without further proof." Where certified by the Commission, and where the identity of the schedule is not questioned, a defect in the form of the certificate is immaterial. Hooper v. Chicago, M. & St. P. R. Co., 91 Iowa, 639, 60 N. W. 487.

[23] Section 56 (b), p. 50.

may be recorded in the office of the recorder of any county, or city and county, in which is located the principal place of business of any public utility affected thereby, or in which is situated any property of any such public utility, and such record shall impart notice of its provisions to all persons.[24]

§ 308. —— Certificate of Note, etc.—Recording.—A certificate under the seal of the Commission that any such order, authorization or certificate has not been modified, stayed, suspended or revoked may also be recorded in the same offices in the same manner and with like effect.[25]

§ 309. Fees to be Charged and Collected by Commission.—The Commission shall charge and collect the following fees: for copies of papers and records not required to be certified or otherwise authenticated by the Commission, ten cents for each folio; for certified copies of official documents and orders filed in its office, fifteen cents for each folio and one dollar for every certificate under seal affixed thereto; for certifying a copy of any report made by a public utility, two dollars; for each certified copy of the annual report of the Commission, one dollar and fifty cents; for certified copies of evidence and proceedings before the Commission, fifteen cents for each folio; for certificate authorizing an issue of bonds, notes or other evidences of indebtedness, one dollar for each thousand dollars of the face value of the authorized issue or fraction thereof up to one million dollars, and fifty cents for each one thousand dollars over one million dollars and up to ten million dollars, and twenty-five cents for each one thousand dollars over ten million dollars,

[24] Ib.
[25] Ib., p. 51.

with a minimum fee in any case of two hundred and fifty dollars.[26]

§ 310. —— **No Fee When Bond Issue for Refunding, Discharge, etc.**—Provided, that no fee shall be required when such issue is made for the purpose of guaranteeing, taking over, refunding, discharging or retiring any bond, note or other evidence of indebtedness up to the amount of the issue guaranteed, taken over, refunded, discharged or retired.[27]

§ 311. —— **No Fee for Copies of Paper or Records, When, or for Annual Report.**—No fees shall be charged or collected for copies of papers, records or official documents, furnished to public officers for use in their official capacity, or for the annual reports of the Commission in the ordinary course of distribution, but the Commission may fix reasonable charges for publications issued under its authority.[28]

§ 312. —— **To be Paid into State Treasury Once a Week—Detailed Statements.**—All fees charged and collected under this section shall be paid, at least once each week, accompanied by a detailed statement thereof, into the treasury of the state to the credit of a fund to be known as the "Railroad Commission Fund," which fund is hereby created.[29]

§ 313. **Inspection of Books, Papers and Documents.** The Commission, each commissioner and each officer and person employed by the Commission shall have the right, at any and all times, to inspect the accounts,

[26] Section 57, p. 51.

Railroad regulation providing for attorneys' fees to be taxed as costs in stipulated proceedings is a valid provision. See Atlantic Coast Line R. Co. v. Riverside Mills, 219 U. S. 186, 31 Sup. Ct. 184, 55 L. ed. 167.

[27] Section 57, p. 51.

[28] Ib.

[29] Ib.

books, papers and documents of any public utility, and the Commission, each commissioner and any officer of the Commission or any employee authorized to administer oaths shall have power to examine under oath any officer, agent or employee of such public utility in relation to the business and affairs of said public utility.[80]

§ 314. —— Authority Under Seal of Commission Required When.—Provided, that any person other than a commissioner or an officer of the Commission demanding such inspection shall produce under the hand and seal of the Commission his authority to make such inspection.[81]

§ 315. —— Written Record of Testimony, etc., to be Filed.—And provided further, that a written record of the testimony or statement so given under oath shall be made and filed with the Commission.[82]

§ 316. Production of Books and Records Kept Outside of State.—The Commission may require, by order served on any public utility in the manner provided herein for the service of orders, the production within this state at such time and place as it may designate, of any books, accounts, papers or records kept by said public utility in any office or place without this state, or, at its option, verified copies in lieu thereof, so that an examination thereof may be made by the Commission or under its direction.[83]

§ 317. Complaints.—Complaint may be made by the Commission of its own motion or by any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricul-

[80] Section 58, p. 51.
[81] Ib.
[82] Ib., p. 52.
[83] Section 59, p. 52.

tural or manufacturing association or organization or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public utility including any rule, regulation or charge heretofore established or fixed by or for any public utility, in violation, or claimed to be in violation, of any provision of law or of any order or rule of the Commission.[84]

§ 318. —— To be Entered by Commission, When —Signature.—Provided, that no complaint shall be entertained by the Commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water or telephone corporation, unless the same be signed by the mayor or the president or chairman of the board of trustees or a majority of the council, Commission, or other legislative body of the city and county, or city or town, if any, within which the alleged violation occurred, or not

[84] Section 60, p. 52.

Initial jurisdictional question in every hearing before the Railroad Commission on complaint is whether, in the given case, the conduct of the railroad company is unreasonable, and such jurisdictional fact should be shown affirmatively to have been found by the Commission. Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission (conc. op. Marshall & Bashford, JJ.), 136 Wis. 146, 116 N. W. 915.

Section 28, Oregon Railroad Commission Act (Laws 1907, c. 53, p. 82), enlarges the common law by permitting a municipal organization to make complaint of unjust discrimination, and empowering the Commission to hear and determine charges of unjust discrimination against a locality, and to give the requisite relief. Portland R. L. & P. Co. v. Railroad Commission, 56 Or. 468, 105 Pac. 712.

Under section 28 of the Oregon Railroad Commission Act (Laws 1907, c. 53, p. 82), fares may be changed by the Railroad Commission where found to be unjustly discriminatory although not unreasonable for the service performed. Portland R. L. & P. Co. v. Railroad Commission, 56 Or. 468, 105 Pac. 709.

Order of commissioners cannot be said to be unjust or unreasonable because the petitioners get less than they called for. Mo. O. & R. Co. v. State (Okl.), 119 Pac. 117.

As to the practice to be followed in such cases, see St. Louis & S. F. R. Co. v. Williams, 25 Okl. 662, 107 Pac. 428.

less than twenty-five consumers or purchasers or prospective consumers or purchasers, of such gas, electricity, water or telephone service.[35]

§ 319. —— Joinder of Grounds — Misjoinder or Nonjoinder of Parties, Immaterial—Rule Applies on Review.—All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of causes of action or grievances or misjoinder or nonjoinder of parties; and in any review by the courts of orders or decisions of the Commission the same rule shall apply with regard to the joinder of causes and parties as herein provided.[36]

§ 320. —— No Dismissal for Want of Direct Damage.—The Commission shall not be required to dismiss any complaint because of the absence of direct damage to the complainant.[37]

§ 321. —— Copy to be Served on Corporation, etc.—Upon the filing of a complaint, the Commission shall cause a copy thereof to be served upon the corporation or person complained of.[38]

[35] Section 60, p. 52.

[36] Ib.

[37] Ib.

[38] Ib.

Carrier or other person interested having been notified and appearing before the Commission and contesting the matter in the manner provided by statute constitutes due process of law. State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 487, 92 Pac. 606; citing Railroad Commissioner v. Atlantic Coast Line R. Co., 71 S. C. 130, 50 S. E. 641; Louisville & N. R. Co. v. Schmidt, 177 U. S. 230, 20 Sup. Ct. 620, 44 L. ed. 747.

"It is no wrong opinion to contend that the due process clause of the Fourteenth Amendment to the constitution of the United States does not control merely forms of procedure in state courts or regulate practice therein. All its requirements are complied with, provided in the proceedings which are claimed to have been due process of

§ 322. —— Service may be Made upon Whom, and How.—Service in all hearings, investigations, and proceedings pending before the Commission may be made upon any person upon whom a summons may be served in accordance with the provisions of the Code of Civil Procedure of this state, and may be made personally or by mailing in a sealed envelope, registered, with postage prepaid.[39]

§ 323. —— Fixing Hearing—Ten Days' Notice.—The Commission shall fix the time when and place where a hearing will be had upon the complaint and shall serve notice thereof, not less than ten days before the time set for such hearing, unless the Commission shall find that public necessity requires that such hearing be held at an earlier date.[40]

§ 324. Hearings—Who may Introduce Evidence at. At the time fixed for any hearing before the Commission or a commissioner, or the time to which the same may have been continued, the complainant and the corporation or person complained of, and such corporations or persons as the Commission may allow to intervene, shall be entitled to be heard and to introduce evidence.[41]

law the person affected has had sufficient notice and adequate opportunity has been offered him to defend." Louisville & N. R. Co. v. Schmidt, 177 U. S. 230, 236, 20 Sup. Ct. 620, 44 L. ed. 787.

Notice of hearing before the Board of Railroad Commissioners had upon a complaint filed with such board and appearance and participation in such hearing constitutes due process of law. State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 92 Pac. 606.

Where no hearing is provided for, no summons or notice to the company to appear before the Commission, no opportunity provided for the company to introduce witnesses before the Commission, and the like, the law is invalid. Chicago, M. & St. P. R. Co. v. Minnesota, 134 U. S. 418, 10 Sup. Ct. 702, 33 L. ed. 970.

[39] Section 60, p. 52.

[40] Ib.

[41] Section 61 (a), p. 53.

§ 325. —— **Process and Enforcing Attendance of Witnesses.**—The Commission shall issue process to enforce the attendance of all necessary witnesses.[42]

§ 326. —— **Order on, to be Filed — Decision.**—After the conclusion of the hearing, the Commission shall make and file its order, containing its decision.[43]

§ 327. —— **Copy of Order to be Served.**—A copy of such order, certified under the seal of the Commission, shall be served upon the corporation or person complained of, or his or its attorney.[44]

§ 328. —— **Order to be Operative in Twenty Days —Exceptions.**—Said order shall, of its own force, take effect and become operative twenty days after the service thereof, except as otherwise provided, and shall continue in force either for a period which may be designated therein or until changed or abrogated by the Commission.[45]

§ 329. —— **Where Order cannot be Complied With in Twenty Days.**—If an order cannot, in the judgment of the Commission, be complied with within twenty days, the Commission may grant and prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may on application and for good cause shown, extend the time for compliance fixed in its order.[46]

§ 330. —— **Full and Complete Record — Testimony.**—A full and complete record of all proceedings had before the Commission or any commissioner on

[42] Ib.
[43] Ib.
[44] Ib.
[45] Ib.
[46] Ib.

any formal hearing had, and all testimony shall be taken down by a reporter appointed by the Commission, and the parties shall be entitled to be heard in person or by attorney.[47]

§ 331. —— Action to Review Order—Transcript on.—In case of an action to review any order or decision of the Commission, a transcript of such testimony, together with all exhibits or copies thereof introduced and all information secured by the Commission on its own initiative and considered by it in rendering its order or decision, and of the pleadings, record and proceedings in the cause, shall constitute the record of the Commission.[48]

§ 332. —— Action to Review Order—Stipulating Question.—Provided, that on review of an order or decision of the Commission, the petitioner and the Commission may stipulate that a certain question or questions alone and a specified portion only of the evidence shall be certified to the supreme court for its judgment, whereupon such stipulation and the question or questions and the evidence therein specified shall constitute the record on review.[49]

§ 333. Public Utility may Complain.—Any public utility shall have a right to complain on any of the grounds upon which complaints are allowed to be filed by other parties, and the same procedure shall be adopted and followed as in other cases, except that the complaint may be heard *ex parte* by the Commission or may be served upon any parties designated by the Commission.[50]

[47] Ib.
[48] Ib.
[49] Ib.
[50] Section 62, p. 53.

§ 334. Increase in Rates.—No public utility shall raise any rate, fare, toll, rental or charge or so alter any classification, contract, practice, rule or regulation as to result in an increase in any rate, fare, toll, rental or charge, under any circumstances whatsoever, except upon a showing before the Commission and a finding by the Commission that such increase is justified.[51]

§ 335. —— Hearing on Individual Rate, etc.—Not to Go into Effect Until Ordered.—Whenever there shall be filed with the Commission any schedule stating an individual or joint rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation, not increasing or resulting in an increase in any rate, fare, toll, rental or charge, the Commission shall have power, and it is hereby given authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleadings by the interested public utility or utilities, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation, and pending the hearing and the decision thereon such rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation shall not go into effect.[52]

§ 336. —— Suspension not to be Beyond Twenty Days—Extension of Period.—Provided, that the period of suspension of such rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation shall not extend beyond one hundred and twenty days beyond the time when such rate, fare, toll, rental,

[51] Section 63 (a), p. 53.

As to power of public utilities company to increase rates in the absence of any attempt by the proper body to fix rates, see Osbourne v. San Diego L. & T. Co., 178 U. S. 22, 20 Sup. Ct. 860, 44 L. ed. 961.

[52] Section 63 (b), p. 53.

charge, classification, contract, practice, rule or regulation would otherwise go into effect unless the Commission, in its discretion, extends the period of suspension for a further period not exceeding six months.[53]

§ 337. —— On Hearing Rate to be Fixed by Commission.—On such hearing the Commission shall establish the rates, fares, tolls, rentals, charges, classifications, contracts, practices, rules or regulations proposed, in whole or in part, or others in lieu thereof, which it shall find to be just and reasonable.[54]

§ 338. —— Go into Effect in Thirty Days from Filing, Unless Otherwise Ordered.—All such rates, fares, tolls, rentals, charges, classifications, contracts, practices, rules or regulations not so suspended shall, on the expiration of thirty days from the time of filing the same with the Commission, or of such lesser time as the Commission may grant, go into effect and be the established and effective rates, fares, tolls, rentals, charges, classifications, contracts, practices, rules and regulations, subject to the power of the Commission, after a hearing had on its own motion or upon complaint, as herein provided, to alter or modify the same.[55]

§ 339. Commission may Change Orders and Decisions.—The Commission may at any time, upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any order or decision made by it. Any order rescinding, altering or amending a prior order or decision shall, when served upon the public utility

[53] Ib., p. 54.
[54] Ib.
[55] Ib.

affected, have the same effect as is herein provided for original orders or decisions.[56]

§ 340. Orders and Decisions—Conclusion in Collateral Proceedings.—In all collateral actions or proceedings, the orders and decisions of the Commission which have become final shall be conclusive.[57]

§ 341. Rehearings—Who may Apply for—Granted When.—After any order or decision has been made by the Commission, any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected, may apply for a rehearing in respect to any matters determined in said action or proceeding and specified in the application for rehearing, and the Commission may grant and hold such rehearing on said matters, if in its judgment sufficient reason therefor be made to appear.[58]

§ 342. —— Necessary to Action on Review.—No cause of action arising out of any order or decision of the Commission shall accrue in any court to any corporation or person unless such corporation or person shall have made, before the effective date of said order or decision, application to the Commission for a rehearing.[59]

§ 343. —— Application to Set Forth Specifically Grounds—Other Grounds Excluded.—Such application shall set forth specifically the ground or grounds on which the applicant considers said decision or order to be unlawful. No corporation or person shall in any

[56] Section 64, p. 54.
[57] Section 65, p. 54.
[58] Section 66, p. 54.
[59] Ib.

court urge or rely on any ground not so set forth in said application.[60]

§ 344. —— Made Ten Days or More Before Order Effective—Decision on.—Any application for a rehearing made ten days or more before the effective date of the order as to which a rehearing is sought, shall be either granted or denied before such effective date, or the order shall stand suspended until such application is granted or denied.[61]

§ 345. —— Made Less Than Ten Days Before Order Effective—Decision for Extension of Date.—Any application for a rehearing made within less than ten days before the effective date of the order as to which a rehearing is sought, and not granted within twenty days, may be taken by the party making the application to be denied, unless the effective date of the order is extended for the period of the pendency of the application.[62]

§ 346. —— Application Granted Without Suspending Order—Affirmance of Decision Implied When.—If any application for a rehearing be granted without a suspension of the order involved, the Commission shall forthwith proceed to hear the matter with all dispatch and shall determine the same within twenty days after final submission, and if such determination is not made within said time, it may be taken by any party to the rehearing that the order involved is affirmed.[63]

§ 347. —— Application for not to Excuse Noncompliance.—An application for rehearing shall not

[60] Ib., p. 55.

[61] Ib.

[62] Ib.

[63] Ib.

excuse any corporation or person from complying with and obeying any order or decision, or any requirement of any order or decision of the Commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the Commission may by order direct.[64]

§ 348. Abrogation, Change or Modification of Order on.—If, after such rehearing and a consideration of all the facts, including those arising since the making of the order or decision, the Commission shall be of the opinion that the original order or decision or any part thereof is in any respect unjust or unwarranted, or should be changed, the Commission may abrogate, change or modify the same.[65]

§ 349. —— Orders After Rehearing — Effect of Original Order.—An order or decision made after such rehearing abrogating, changing or modifying the original order or decision shall have the same force and effect as an original order or decision, but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the Commission.[66]

§ 350. Review—Application for Writ of—When to be Made.—Within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the rendition of the decision on rehearing, the applicant may apply to the supreme court of this state for a writ of certiorari or review (hereinafter referred to as a writ of review) for the purpose of having the lawfulness of the orig-

[64] Ib.
[65] Ib.
[66] Ib.

inal order or decision or the order or decision on rehearing inquired into and determined.[67]

[67] Section 67, p. 55.

Rate fixed and affirmed on rehearing may be reviewed on appeal, although the time provided has expired, where such rate continues until changed, or where some question of law is involved, the decision of which may affect the future action of the authority or board charged with the duty of fixing rates. See Boise City Irr. & L. Co. v. Clark, 131 Fed. 415, 65 C. C. A. 406.

Inquiry by the court as to the reasonableness of a schedule of rates or other regulation, whether made by the legislature or through a Commission, is purely a judicial inquiry, and the legislature may expressly consign the power upon the courts. State ex rel. Taylor v. Missouri-Pac. R. Co., 76 Kan. 467, 485, 92 Pac. 606; citing Reagan v. Farmers' L. & T. Co., 154 U. S. 362, 14 Sup. Ct. 1047, 38 L. ed. 1014; Smyth v. Ames, 169 U. S. 466, 18 Sup. Ct. 418, 42 L. ed. 819; St. L. & S. F. R. Co. v. Gill, 165 U. S. 49, 15 Sup. Ct. 484, 39 L. ed. 567.

The provision of the statute providing for the contingency of a review of the order of the Commission fixing the rate or service, and upheld as not unreasonable or set aside as unreasonable, is within the power of the legislature. See Minneapolis, St. P. & Ste. Marie R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 915.

For relief against an unlawful order of the Commission, a party affected is entitled to sue in any court, state or federal, having jurisdiction, and the penalties imposed by section 53 as above enumerated applied to the single offense of a refusal or failure to obey the order of the Railroad Commission, not to a repetition of offenses from day to day or at intervals as long as the carrier continues in the refusal to obey the order of the Commission. Oregon R. & Nav. Co. v. Campbell, 173 Fed. 957, 989, distinguishing Ex parte Young, 209 U. S. 123, 28 Sup. Ct. 441, 52 L. ed. 714, 13 L. R. A., N. S., 932.

Courts reviewing the orders and mandates of the Railroad Commission are not required to exercise any legislative power. They are not to ascertain and disclose rates or to declare a rule of law unreasonable; they are merely to exercise judicial power in determining whether the "order" of the Commission is reasonable or unreasonable; if reasonable, to confirm it; if unreasonable, to set it aside, leaving the Commission free to make further investigations and take further action. The conferring of such authority upon courts of law is well within the legislative power. See Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 915.

Courts cannot be empowered by statute to review or set aside as unreasonable acts of the legislature which are not in conflict with state or federal constitutions or with some supreme federal law. See Minne-

§ 351. —— Writ of, Returnable When—Direction of.—Such writ shall be made returnable not later than thirty days after the date of the issuance thereof, and

apolis, St. P. & Ste. Marie R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 915.

Courts should not interfere with the determination and order of the Railroad Commission except in those cases where they are clearly required to do so. See Minneapolis, St. P. & Ste. Marie R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 915.

In an action to review the order of the Commission as unlawful or unreasonable, the burden is upon the plaintiff to show such fact by "clear and satisfactory" evidence. Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission, 136 Wis. 146, 165, 116 N. W. 915.

The Wisconsin Railroad Commission Act of September 15, 1906, provides that "in all trials under this section the burden of proof shall be upon the plaintiff to show by clear and satisfactory evidence that the order of the Commission complained of is unlawful or unreasonable, as the case may be." Procedure under this provision discussed and determined in Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 915.

"Clear and satisfactory" evidence, as used in the Wisconsin Railroad Commission Act of October 15, 1906, is significant, for the reason that at the time of the enactment of that statute the phrase was used in the law of that state to describe a degree of proof greater than a preponderance of evidence, and such as was necessary in order to establish fraud on proving a mistake in a written instrument. Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission, 136 Wis. 146, 166, 116 N. W. 915. See Bannon v. Insurance Company of North America, 115 Wis. 250, 258, 91 N. W. 666; Shaw v. Gilbert, 111 Wis. 165, 86 N. W. 188; Dallman v. Clasen, 116 Wis. 113, 117, 92 N. W. 565; Harrigan v. Gilchrist, 121 Wis. 127, 313, 99 N. W. 909; Parker v. Hull, 71 Wis. 368, 37 N. W. 351, 5 Am. St. Rep. 224.

Supreme court acts as a judicial tribunal in disposing of matters of dispute between railroad and Commission, not as a mere administrative board supervisory of the acts of the Railroad Commission. Morgan's La. & T. R. & S. S. Co. v. Railroad Commission, 109 La. 247, 33 So. 24.

"No rate is irrevocably fixed by the state until the matter has been laid before the body having the last word." Prentis v. Atlantic Coast Line, 211 U. S. 210, 29 Sup. Ct. 67, 53 L. ed. 150.

Compare Smyth v. Ames, 167 U. S. 466, 18 Sup. Ct. 418, 42 L. ed. 819.

Review by supreme court was said not to be conferred by the Wisconsin Act unless the order of Commission complained of was confiscatory in its character and effect. This contention was denied by the supreme court, which held that "unlawful and unreasonable" in the

shall direct the Commission to certify its record in the case to the court.[68]

§ 352. —— Hearing on Return Day—Continuance. On the return day, the cause shall be heard by the supreme court, unless for a good reason shown the same be continued.[69]

§ 353. —— New Evidence not Allowed—To be Heard upon the Record.—No new or additional evidence may be introduced in the supreme court, but the cause shall be heard on the record of the Commission as certified to by it.[70]

§ 354. —— Extent of Review.—The review shall not be extended further than to determine whether the Commission has regularly pursued its authority, including a determination of whether the order or de-

statute meant "confiscatory," and that the statute authorizing a review by the court was valid and imposes upon the court duties which it may not disregard. Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission, 136 Wis. 146, 166, 116 N. W. 915. (Wisconsin Constitution, article VIII, section 6, seems to forbid any interpretation except that given by the court.)

Order of Commission being separable and a part of it without error, while the balance is erroneous, the part without error will be sustained and the erroneous part reversed or set aside. St. Louis & S. F. R. Co. v. Williams, 25 Okl. 662, 107 Pac. 428.

Where the rates established by the Commission are not unreasonable, there can be no taking of the carrier's property without due process of law. Oregon R. & Nav. Co. v. Campbell, 173 Fed. 957, 990.

[68] Section 67, p. 55.

[69] Ib.

[70] Ib., p. 56.

As to judicial notice taken regarding conditions within the state on appeal from order of Railroad Commission directing train service or roads, see St. Louis & S. F. R. Co. v. Williams, 25 Okl. 662, 107 Pac. 428.

Court may, doubtless, for purpose of comparison and to aid it in ascertaining how far the order diverges from a reasonable standard, take evidence of and consider criteria offered; but this is for the purpose of comparison only. The court cannot regulate, adjudicate or declare the statutory standard. Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission, 136 Wis. 146, 165, 116 N. W. 915.

cision under review violates any right of the petitioner under the constitution of the United States or of the state of California.[71]

[71] Section 67, p. 56.

Final tribunal and arbiter is not the judiciary but the legislature. Chicago, B. & Q. R. Co. v. Jones, 149 Ill. 361, 37 N. E. 247.

Legislature has power to declare what is a reasonable compensation and to fix reasonable maximum rates of carriage, but in the absence of statutory regulation upon the subject, the courts must decide what is a reasonable rate. Chicago, B. & Q. R. Co. v. Jones, 149 Ill. 361, 375, 37 N. E. 247.

The legislature having power to fix what is a reasonable rate, the courts must decide for the railroad companies, when controversies arise, what is a reasonable rate. Chicago, B. & Q. R. Co. v. Iowa, 94 U. S. 195, 24 L. ed. 95.

Court to judge of reasonableness of freight charged. Guard v. Colland, 6 M. & S. 70; Lowder v. Heirons, 2 Moo. 102; Baxendale v. G. W. R. Co., 5 C. B., N. S., 330.

Statute or order of Railroad Commission fixing rates of transportation is not to be interfered with, except upon clear and satisfactory evidence showing that it is unjust and unreasonable. In Matter of Auburn & W. R. Co., 37 App. Div. 162, 55 N. Y. Supp. 895.

When legislature declares that certain charges shall be reasonable or allowed, the common-law rule to that effect can prevail, and leave the matter there. Resort may be had to the court to inquire judicially whether the charges are reasonable. Chicago, B. & Q. R. Co. v. Jones, 149 Ill. 361, 37 N. E. 247.

Courts are not by the statute authorized to investigate the subject anew, to put itself in the place of the Commission and search for reasonable and just rates with power to substitute its own judgment of what is reasonable and just for the judgment of the commissioners. Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission, 136 Wis. 146, 164, 116 N. W. 915.

Court is not given authority to search for or disclose or declare the "reasonable and just" rates or service provided for by the act, but merely to determine whether the order of the Commission is "unreasonable"—quite a different thing. The conferring of such power upon the courts was clearly within the authority of the legislature. In performing the functions required of them the courts are not to, and do not, exercise legislative power, do not ascertain and disclose rates, do not declare any rules or any law unreasonable, but merely exercise judicial power to ascertain and determine whether the Commission has so far failed in its search for different lawful, just and reasonable rates, not to find and declare that which is unreasonable.

§ 355. —— Findings and Conclusion of Commission Final on.—The findings and conclusions of the Commission on questions of fact shall be final and shall

Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission, 136 Wis. 146, 165, 116 N. W. 915.

The court is not investigating for the purpose of establishing a fixed point. The question whether the order is within the field of reason or outside of its boundaries is the only question before the court. This is quite a different question from that which was before the Commission on the fixing of the order. Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission, 136 Wis. 146, 165, 116 N. W. 915.

Courts reviewing an order or mandate of the Railroad Commission are not to determine whether the rate or service fixed by the Commission is just and reasonable, but to determine whether the "order" is unreasonable or unjust; and if the court finds that such order is such a one that reasonable men might well differ as to its correctness, the court cannot say that it is unreasonable. See Minneapolis, St. P. & St. M. R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 915.

Reasonableness of rates fixed by Commission being questioned, evidence showing what carriers in other states charge is not admissible, where there is no showing that conditions are similar. Hooper v. Chicago, M. & St. P. R. Co., 91 Iowa, 639, 60 N. W. 487.

Full judicial review of the action of the Commission is contemplated by the act of December 23, 1911, the court to try questions of law and fact the same as they are tried by the Commission, giving such weight, however, to the decision of the Commission on all matters of fact that it shall stand, unless shown to be wrong by "clear and satisfactory" evidence. See Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission (conc. op. Marshall & Bashford, JJ.), 136 Wis. 146, 116 N. W. 915.

Rates fixed held to be unreasonable, court will not fix rates deemed by it to be reasonable; this duty devolves upon the board or body by law charged with the duty of fixing proper rates. Osbourne v. San Diego L. & T. Co., 178 U. S. 22, 20 Sup. Ct. 860, 44 L. ed. 961.

In considering the reasonableness of the rate fixed by the Railroad Commission, courts are justified in taking into consideration what is known as "commercially necessary"; that is to say, the application of the principle when fixing rates which are forced upon common carriers by various conditions and circumstances and are not common practice among railroad companies—a business policy which actuates and influences the carriers to disregard as to a strict comparison and strict equality as to bulk, or weight or value as well as to the distance of the carriage. State ex rel. Railroad & Warehouse Commission v. Minneapolis & St. L. R. Co., 80 Minn. 191, 83 N. W. 60.

Estimating the cost of operating a railroad per ton of freight per mile of carriage for purpose of determining reasonableness of a tariff of rates fixed by the state Railroad Commission, it is error to take into

not be subject to review; such questions of fact shall include ultimate facts and the findings and conclusions of the Commission on reasonableness and discrimination.[72]

consideration the amount of earnings which has been appropriated and paid out as dividends on stock shares of such railroad company. State ex rel. Railroad & Warehouse Commission v. Minneapolis & St. L. R. Co., 80 Minn. 191, 83 N. W. 60.

On appeal to the supreme court, the scope of review is the same as in case of an appeal from a judgment in an action tried by the court. Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission (conc. op. Marshall & Bashford, JJ.), 136 Wis. 146, 116 N. W. 915.

On review of order of Railroad Commission inquiry is not whether rate, regulation, or service fixed by such Commission is just and reasonable, but whether the "order" of such Commission is unreasonable or unlawful. Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission, 136 Wis. 146, 165, 116 N. W. 915.

Provisions of Wisconsin Railroad Commission Act which are similar to those of section 32 of the Oregon Railroad Commission Act construed as to the scope of the judicial review in Minneapolis, St. Paul & Ste. Marie R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 905.

[72] Section 67, p. 56.

Considering degree of proof required and viewpoint of investigation by the supreme court, and that the court is dealing with a question of fact, or a mixed question of fact and law, great weight is necessary to be given to the orders of the Commission. Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission, 136 Wis. 146, 167, 116 N. W. 915. See Morgan's La. & T. R. & S. S. Co. v. Railroad Commission, 109 La. 247, 33 So. 214.

Degree of proof required in an action to set aside an order of the Railroad Commission, the viewpoint of investigation by the court, and the circumstances that the court is dealing with a question of fact, or with a mixed question of fact and law, required that great weight necessarily be given to the order of the Commission, and that a very strong case must be made by the complainant in order to establish its unreasonableness. See Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 915.

Distinction between the terms "unreasonable" and "unlawful" was raised but not determined in the case of Minneapolis, St. P. & Ste. Marie R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 915.

Provision making *prima facie* presumption in favor of findings of fact of Railroad Commission, such findings will not be disturbed by the court when supported by evidence. St. Louis & S. F. R. Co. v. Williams, 25 Okl. 662, 107 Pac. 428.

The provision of section 11 of the Kansas Act creating the Board of Railroad Commissioners (Laws 1905, c. 340), making certain orders of

§ 356. —— Right to Appear at.—The Commission and each party to the action or proceeding before the

such board conclusive after the lapse of thirty days after promulgation, is a rule of evidence and not a limitation upon the rights of a complaining party to offer evidence in defense of an action in mandamus, to compel obedience to such order. State ex rel. Taylor v. Missouri-Pac. R. Co., 76 Kan. 467, 92 Pac. 606.

The provision of the act of December 23, 1911, placing the burden of proof upon the plaintiff to show by clear and satisfactory evidence that the order of the Commission is unlawful or unreasonable, does not, by the words "clear and satisfactory," intend to describe a degree of proof; clearly amount is mere preponderance of evidence, and such as required to establish fraud or prove mistake in a written instrument. Minneapolis, St. P. & Ste. Marie R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 915.

Reasonableness and justice of rates, etc., fixed by Railroad Commission is to be determined by the same rules as if it were an issue in other classes of suit, except as to the conclusion of the character of the evidence required. Railroad Commission v. Houston & T. C. R. Co., 90 Tex. 340, 353, 38 S. W. 750.

Test of unreasonableness of regulation adopted by the Railroad Commission is not a consideration of the question whether such regulation amounts to a taking of property without proper compensation. Such a test is applicable only in the determining of the constitutionality of the law. Railroad Commission v. Houston & T. C. R. Co., 90 Tex. 340, 353, 38 S. W. 750.

In determining the reasonableness of the rates fixed by the Railroad Commission, a court cannot assume that the cost of reproduction of a line of railroad, or that the present line of railroad, as compared with the original cost of construction, is the amount of stock and bonds outstanding, or that it is what the road cost up to the time of trial. State ex rel. Railroad & Warehouse Commission v. M. & St. L. R. Co., 80 Minn. 191, 83 N. W. 60.

Prima facie evidence of reasonableness of rates fixed by the Railroad Commission and the evidence necessary to overcome the same. See Steenerson v. G. N. R. Co., 69 Minn. 353, 72 N. W. 713; State ex rel. Railroad & Warehouse Commission v. M. & St. L. R. Co., 80 Minn. 191, 83 N. W. 60; Smyth v. Ames, 169 U. S. 466, 18 Sup. Ct. 418, 42 L. ed. 819.

Railroad Commission, under the Illinois Act, has authority to make schedule for changes, which are *prima facie* evidence of the reasonableness of the rates to be charged by carriers by rail, and the courts, in a suit against the carrier, cannot inquire and determine what is a reasonable rate. Chicago, B. & Q. R. Co. v. Jones, 149 Ill. 361, 37 N. E. 247.

Commission shall have the right to appear in the review proceeding.[73]

§ 357. —— Judgment of Supreme Court.—Upon the hearing the supreme court shall enter judgment either affirming or setting aside the order or decision of the Commission.[74]

§ 358. —— Provisions of Code of Civil Procedure as to Writs of Review Govern.—The provisions of the Code of Civil Procedure of this state relating to writs of review shall, so far as applicable and not in conflict with the provisions of this act, apply to proceedings instituted in the supreme court under the provisions of this section.[75]

[73] Section 67, p. 56.

[74] Ib.

Order of Commission need not be confiscatory in its character and effect in order to render it unlawful and unreasonable within the meaning of the statute. Minneapolis, St. P. & Ste. Marie R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 915.

Reviewing order of Commission requiring certain service from a railroad company or other carrier, the court must ascertain that the Commission by the order complained of fixed the minimum service which, in its opinion, would be reasonable; and if the court finds, upon full consideration of the evidence, giving due weight to the decision of the Commission, that a less service would be reasonable, the court should hold the order to be unlawful, because an erroneous decision of a concrete question of fact. Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission (dis. op. Dodge, J.), 136 Wis. 146, 116 N. W. 915.

See State ex rel. Tompkins v. Chicago, M. & St. P. R. Co., 11 S. D. 282, 77 N. W. 104, where it was held that judgment could not be rendered and entered on the pleading alone where the defendant had appeared and made answer denying allegations of petition, but that it was incumbent on plaintiff to submit testimony sufficient to establish the allegations of the petition.

[75] Section 67, p. 56.

The difference in procedure under the Interstate Commerce Act and under the state Railroad Commission or Public Utilities Commission Acts, consists chiefly in this: that under the Commerce Act the carriers must sue to overcome a *prima facie* case, while under the state acts the Commission itself must sue to impose its order, and the carrier

§ 359. —— Jurisdiction on.—No court of this state (except the supreme court to the extent herein specified) shall have jurisdiction to review, reverse, correct or annul any order or decision of the Commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the Commission in the performance of its official duties.[76]

must overcome the *prima facie* case by its defense. Oregon R. & Nav. Co. v. Campbell, 173 Fed. 957.

A further distinction is to be noted in this: the Commerce Act enforces its behests and the findings and orders of the Commission by the imposition of fines and penalties, while under the state acts the Commission must resort more generally to the circuit court by remedial action or suit for the enforcement of the law's mandate and its own recommendations and orders. Oregon R. & Nav. Co. v. Campbell, 173 Fed. 957.

[76] Section 67, p. 56.

An appeal from Commission confers appellate jurisdiction upon the supreme court in all actions before the Corporation Commission wherein it is sought to regulate the management and operation of transportation companies. But the supreme court has no jurisdiction in case against Corporation Commission "on order for opening streets"; the court saying that it does not follow that an appeal lies in all actions over which the Commission may have jurisdiction. Atchison, T. & S. F. R. Co. v. State, 27 Okl. 820, 115 Pac. 1101.

Court cannot be invested with discretion to determine whether the precedent law declared by the legislature shall or shall not go into effect in particular cases. Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission, 136 Wis. 146, 163, 116 N. W. 915. See In re North Milwaukee, 93 Wis. 616, 67 N. W. 133, 33 L. R. A. 638; Dowling v. Lancashire Ins. Co., 92 Wis. 63, 65 N. W. 738, 31 L. R. A. 112.

The court acts judicially in determining the matter of rates finally, not in a legislative capacity, so that in the court's action there is not a competition of legislative and judicial functions in one person or body. Oregon R. & Nav. Co. v. Campbell, 173 Fed. 957, 976.

The intendment of the act is that the Commission shall exercise the administrative power necessary to make the legislative act of fixing rates effective and with respect to the administration of the law, while the judiciary exercises the judicial power by passing upon the reasonableness of the rates fixed by the Commission, when that reasonableness is questioned. Oregon R. & Nav. Co. v. Campbell, 173 Fed. 957, 976, distinguishing Chicago, M. & St. P. R. Co. v. Minnesota, 134 U. S. 418, 10 Sup. Ct. 462, 33 L. ed. 970.

Whether it is within the power of the legislature to confer upon courts authority to review the reason of rules or orders of the Railroad

§ 360. —— Mandamus to Commission on.—Provided, that the writ of mandamus shall lie from the supreme court to the Commission in all proper cases.[77]

§ 361. Suspension of Commission's Order—None Pending Review.—The pendency of a writ of review shall not of itself stay or suspend the operation of the order or decision of the Commission, but during the pendency of such writ, the supreme court in its discretion may stay or suspend, in whole or in part, the operation of the Commission's order or decision.[78]

§ 362. —— Stay by Supreme Court, Notice.—No order so staying or suspending an order or decision of the Commission shall be made by the supreme court otherwise than upon three days' notice and after hearing, and if the order or decision of the Commission is suspended, the order suspending the same shall con-

Commission depends upon the fundamental nature of these rules or orders. If such rules and orders are purely legislative and violate no constitutional law or supreme federal statute, it would be incorrect to say that their reason could be the subject of judicial review, because that would give the judicial branch of government a supervisory control over legislation, largely discretionary and limited only by the judicial opinion of what is reasonable. Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 915.

[77] Section 67, p. 56.

Action in mandamus lies to compel performance of some official or corporate act by a public officer or corporation when no other remedy specifically exists. Smalley v. Yates, 36 Kan. 519, 13 Pac. 845. See State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 585, 92 Pac. 606.

Injunction restraining Railroad Commission from publishing and putting in force a schedule is no defense to an act for the violation of the order of the Commission where the law has already made the schedule effective without publishing at the time the injunction is granted. Hooper v. Chicago, M. & St. P. R. Co., 91 Iowa, 639, 60 N. W. 487.

In proceedings by mandamus in the supreme court, under the Kansas Act, the only question to be determined is whether the order of the Commission fixing rates is reasonable. State ex rel. Taylor v. Missouri-Pac. R. Co., 76 Kan. 467, 92 Pac. 606.

[78] Section 68 (a), p. 56.

tain a specific finding based upon evidence submitted to the court and identified by reference thereto, that great or irreparable damage would otherwise result to the petitioner and specifying the nature of the damage.[79]

§ 363. —— Stay Effective When Bond Filed, Only. In case the order or decision of the Commission is stayed or suspended, the order of the court shall not become effective until a suspending bond shall first have been executed and filed with, and approved by the Commission (or approved, on review, by the supreme court), payable to the people of the state of California, and sufficient in amount and security to insure the prompt payment, by the party petitioning for the review, of all damages caused by the delay in the enforcement of the order or decision of the Commission, and of all moneys which any person or corporation may be compelled to pay, pending the review proceedings, for transportation, transmission, product, commodity or service in excess of the charges fixed by the order or decision of the Commission, in case said order or decision is sustained.[80]

§ 364. —— Stay Granted—Money to be Paid into Court and Impounded—Deposit at Interest.—The supreme court, in case it stays or suspends the order or decision of the Commission in any matter affecting rates, fares, tolls, rentals, charges or classifications, shall also by order direct the public utility affected

[79] Section 68 (b), p. 56.

Injunction not to issue against Commission's order except on application, notice and hearing. Both are contemplated under the provision of section 33 (Oregon Laws 1907, c. 53, p. 87, as amended by Laws 1909, c. 103, p. 163), upon the suspension of the order of the Commission pending refusal of such order, does not cover other penalties provided for in this statute. Oregon R. & Nav. Co. v. Railroad Commission, 173 Fed. 989.

[80] Section 68 (c), p. 56.

to pay into court, from time to time, there to be impounded until the final decision of the case, or into some bank or trust company paying interest on deposits, under such conditions as the court may prescribe, all sums of money which it may collect from any corporation or person in excess of the sum such corporation or person would have been compelled to pay if the order or decision of the Commission had not been stayed or suspended.[81]

§ 365. Stay Granted—Act to be Kept Under Oath, Condition of—Penalty for Failure.—In case the supreme court stays or suspends any order or decision lowering any rate, fare, toll, rental, charge or classification, the Commission, upon the execution and approval of said suspending bond, shall forthwith require the public utility affected, under penalty of the immediate enforcement of the order or decision of the Commission (pending the review and notwithstanding the suspending order), to keep such accounts, verified by oath, as may, in the judgment of the Commission, suffice to show the amounts being charged or received by such public utility, pending the review, in excess of the charges allowed by the order or decision of the Commission, together with the names and addresses of the corporations or persons to whom overcharges will be refundable in case the charges made by the public utility, pending the review, be not sustained by the supreme court.[82]

§ 366. —— Additional Securities may be Required.—The court may, from time to time, require said party petitioning for a review to give additional security on, or to increase the said suspending bond, whenever in the opinion of the court the same may be

[81] Ib., p. 57.
[82] Section 68 (d), p. 57.

necessary to insure the prompt payment of said damages and said overcharges.[83]

§ 367. —— Disposition of Moneys on Final Decision.—Upon the final decision by the supreme court, all moneys which the public utility may have collected, pending the appeal in excess of those authorized by such final decision, together with interest, in case the court ordered the deposit of such moneys in a bank or trust company, shall be promptly paid to the corporations or persons entitled thereto, in such manner and through such methods of distribution as may be prescribed by the Commission.[84]

§ 368. —— Moneys not Claimed—Advertisement. If any such moneys shall not have been claimed by the corporations or persons entitled thereto within one year from the final decision of the supreme court, the Commission shall cause notice to such corporations or persons to be given by publication, once a week for two successive weeks, in a newspaper of general circulation, printed and published in the city and county of San Francisco, and such other newspaper or newspapers as may be designated by the Commission, said notice to state the names of the corporations or persons entitled to such moneys and the amount due each corporation or person.[85]

§ 369. —— Final Disposition of Moneys not Claimed.—All moneys not claimed within three months after the publication of said notice shall be paid by the public utility, under the direction of the Commission, into the state treasury for the benefit of the general fund.[86]

[83] Section 68 (d), p. 57.
[84] Ib.
[85] Ib.
[86] Ib.

§ 370. Court Proceedings — Preferences.—All actions and proceedings under this act, and all actions or proceedings to which the Commission or the people of the state of California may be parties, and in which any question arises under this act, or under or concerning any order or decision of the Commission, shall be preferred over all other civil causes except election causes and shall be heard and determined in preference to all other civil business except election causes, irrespective of position on the calendar. The same preference shall be granted upon application of the attorney of the Commission in any action or proceeding in which he may be allowed to intervene.[87]

§ 371. Physical Valuation—Hearings for.—For the purpose of ascertaining the matters and things specified in section 47 of this act, concerning the value of the property of public utilities, the Commission may cause a hearing or hearings to be held at such time or times and place or places as the Commission may designate.[88]

§ 372. —— Thirty Days' Notice in Writing—Conditions of.—Before any hearing is had, the Commission shall give the public utility affected thereby at least thirty days' written notice, specifying the time and place of such hearing, and such notice shall be sufficient to authorize the Commission to inquire into the matters designated in this section and in said section 47 of this act, but this provision shall not prevent the Commission from making any preliminary examination or investigation into the matters herein referred to, or from inquiring into such matters in any other investigation or hearing.[89]

[87] Section 69, p. 58.
[88] Section 70, p. 58.
[89] Ib.

§ 373. —— Who Entitled to Appear at and Put in Evidence.—All public utilities affected shall be entitled to be heard and to introduce evidence at such hearing or hearings.[90]

§ 374. —— Scope of Inquiry — Evidence.—The Commission is empowered to resort to any other source of information available. The evidence introduced at such hearing shall be reduced to writing and certified under the seal of the Commission.[91]

§ 375. —— Findings of Fact in Writing to be Filed.—The Commission shall make and file its findings of fact in writing upon all matters concerning which evidence shall have been introduced before it which in its judgment have bearing on the value of the property of the public utility affected.[92]

§ 376. —— Findings of Fact Subject to Review.—Such findings shall be subject to review by the supreme court of this state in the same manner and within the same time as other orders and decisions of the Commission.[93]

§ 377. —— Findings of Commission Admissible as Evidence.—The findings of the Commission so made and filed, when properly certified under the seal of the Commission, shall be admissible in evidence in any action, proceeding or hearing before the Commission or any court, in which the Commission, the state or any officer, department or institution thereof, or any county, city and county, municipality or other body politic and the public utility affected may be interested whether arising under the provisions of this act

[90] Ib.
[91] Ib.
[92] Ib.
[93] Ib.

or otherwise, and such findings, when so introduced, shall be conclusive evidence of the facts therein stated as of the date therein stated under conditions then existing, and such facts can only be controverted by showing a subsequent change in conditions bearing upon the facts therein determined.[94]

§ 378. —— Further Hearings from Time to Time. The Commission may from time to time cause further hearings and investigations to be had for the purpose of making revaluations or ascertaining the value of any betterments, improvements, additions or extensions made by any public utility subsequent to any prior hearing or investigation, and may examine into all matters which may change, modify or affect any finding of fact previously made, and may at such time make findings of fact supplementary to those theretofore made.[95]

§ 379. —— Further Hearing shall be on Written Notice.—Such hearings shall be had upon the same notice and be conducted in the same manner, and the findings so made shall have the same force and effect as is provided herein for such original notice, hearing and findings.[96]

§ 380. —— Findings at Supplemental Hearings—Considered With Original Finding.—Provided, that such findings made at such supplemental hearings or investigations shall be considered in connection with and as a part of the original findings except in so far as such supplemental findings shall change or modify the findings made at the original hearing or investigation.[97]

[94] Ib.
[95] Ib.
[96] Ib., p. 59.
[97] Ib.

§ 381. —— Excessive or Discriminatory Charge—Reparation.—When complaint has been made to the Commission concerning any rate, fare, toll, rental or charge for any product or commodity furnished or service performed by any public utility, and the Commission has found, after investigation, that the public utility has charged an excessive or discriminatory amount for such product, commodity or service, the Commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection; provided, no discrimination will result from such reparation.[98]

§ 382. —— Failure to Comply With Order of Reparation—Action.—If the public utility does not comply with the order for the payment of reparation within the time specified in such order, suit may be instituted in any court of competent jurisdiction to recover the same.[99]

§ 383. —— Complaints Concerning and Petition in Action—Limitation.—All complaints concerning excessive or discriminatory charges shall be filed with the Commission within two years from the time the cause of action accrues, and the petition for the enforcement of the order shall be filed in the court within one year from the date of the order of the Commission.[100]

§ 384. —— Remedy Provided is Cumulative.—The remedy in this section provided shall be cumulative and in addition to any other remedy or remedies in this act provided in case of failure of a public utility to obey an order or decision of the Commission.[101]

[98] Section 71 (a), p. 59.
[99] Section 71 (b), p. 59.
[100] Ib.
[101] Ib.

§ 385. Commission Shall Enforce Laws—Action in Name of People.—It is hereby made the duty of the Commission to see that the provisions of the constitution and statutes of this state affecting public utilities, the enforcement of which is not specifically vested in some other officer or tribunal, are enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due the state therefor recovered and collected, and to this end it may sue in the name of the people of the state of California.[102]

§ 386. —— Attorney General and District Attorney to Aid.—Upon the request of the Commission, it shall be the duty of the attorney general or the district attorney of the proper county or city and county to aid in any investigation, hearing or trial had under the provisions of this act, and to institute and prosecute actions or proceedings for the enforcement of the provisions of the constitution and statutes of this state affecting public utilities and for the punishment of all violations thereof.[103]

§ 387. Public Utilities Liable for Damages—Who Entitled to Damages.—In case any public utility shall do, cause to be done or permit to be done any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or thing required to be done, either by the constitution, any law of this state or any order or decision of the Commission, such public utility shall be liable to the persons or corporations affected thereby for all loss, damages or injury caused thereby or resulting therefrom, and if the court shall find that the act or omission was willful, the court may in addition to the

[102] Section 72, p. 59.
[103] Ib.

actual damages award damages for the sake of example and by way of punishment.[104]

§ 388. —— Jurisdiction of Action — Who may Bring.—An action to recover for such loss, damage or injury may be brought in any court of competent jurisdiction by any corporation or person.[105]

§ 389. —— Recovery by Individuals, etc., not to Affect Right of State to Penalties.—No recovery as in this section provided shall in any manner affect a recovery by the state of the penalties in this act provided or the exercise by the Commission of its power to punish for contempt.[106]

§ 390. Effect of Act—Right of State to Penalties, etc., not Affected.—This act shall not have the effect to release or waive any right of action by the state, the Commission, or any person or corporation for any right, penalty or forfeiture which may have arisen or accrued or may hereafter arise or accrue under any law of this state.[107]

§ 391. —— Penalties Provided Cumulative.—All penalties accruing under this act shall be cumulative of each other, and a suit for the recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture or be a bar to any criminal prosecution against any public utility, or any officer, director, agent or employee thereof, or any other corporation or person, or be a bar to the exercise by the Commission of its power to punish for contempt.[108]

[104] Section 73 (a), p. 59.
[105] Ib., p. 60.
[106] Section 73 (b), p. 60.
[107] Section 74 (a), p. 60.
[108] Section 74 (b), p. 60.

§ 392. Summary Proceedings—Injunction to Prevent Violation of Order, etc.—Whenever the Commission shall be of the opinion that any public utility is failing or omitting or about to fail or omit, to do anything required of it by law, or by any order, decision, rule, direction or requirement of the Commission, or is doing anything or about to do anything, or permitting anything or about to permit anything to be done, contrary to or in violation of law or of any order, decision, rule, direction or requirement of the Commission, it shall direct the attorney of the Commission to commence an action or proceeding in the superior court in and for the county, or city and county, in which the cause or some part thereof arose, or in which the corporation complained of, if any, has its principal place of business, or in which the person, if any, complained of, resides, in the name of the people of the state of California, for the purpose of having such violations or threatened violations stopped and prevented, either by mandamus or injunction.[109]

[109] Section 75, p. 60.

As to jurisdiction of court on proceedings in mandamus to compel obedience to an order made by the Board of Railroad Commissioners, see State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 92 Pac. 606.

In proceedings in mandamus, under the Kansas Act, to compel obedience to an order of the Commissioner, the order properly made and promulgated is *prima facie* reasonable, and the burden of proof is upon the complaining carrier to establish its unreasonableness. State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 92 Pac. 606.

On mandamus proceedings to compel obedience to an order of the Railroad Commission, the order is *prima facie* reasonable and the burden of proof is upon the person seeking to set it aside to establish its unreasonableness. State ex rel. Taylor v. Missouri Pacific R. Co., 76 Kan. 467, 92 Pac. 606.

Under the Kansas Act creating the Board of Railroad Commissioners, the supreme court has jurisdiction of original proceedings in *mandamus* to compel obedience to an order of the Commission. The power thus conferred upon the court is a legislative or nonjudicial power, but is

§ 393. —— Attorney of Commission to Proceed in Superior Court.—The attorney of the Commission shall thereupon begin such action or proceeding by petition to such superior court, alleging the violation or threatened violation complained of, and praying for appropriate relief by way of mandamus or injunction.[110]

§ 394. —— Court to Fix Hearing—Copy of Petition to be Served.—It shall thereupon be the duty of the court to specify a time, not exceeding twenty days after the service of the copy of the petition, within which the public utility complained of must answer the petition, and in the meantime said public utility may be restrained.[111]

§ 395. —— Procedure in Case of Default.—In case of default in answer, or after answer, the court shall immediately inquire into the facts and circumstances of the case.[112]

judicial, pure and simple. State ex rel. Taylor v. Missouri Pac. R. Co., 76 Kan. 467, 92 Pac. 606.

In mandamus to enforce tariff of Railroad Commission, under the Minnesota Act, the carrier is entitled to an examination of matters of fact in which evidence *de novo* may be taken. State ex rel. Railroad & Warehouse Commission v. Minneapolis & St. L. R. Co., 80 Minn. 191, 83 N. W. 60.

Where a Railroad Commission is empowered by statute to fix rates for the transportation of freight, and its order in this respect is disregarded or refused by any common carrier, the Commission can institute suit in the name of the state for the purpose of enforcing obedience thereto. On such action being instituted, the court will require the carrier to conform to the order of the Commission fixing the rate. State v. So. Pac. Co., 23 Or. 424, 31 Pac. 960.

110 Section 75, p. 60.

111 Ib.

State ex rel. Board of Railroad Commrs. v. Duluth, W. & P. R. Co., 25 S. D. 100, 125 N. W. 564, 1910, establishes right of Railroad Commission to bring suit by petition for enforcement of its order to a common carrier.

112 Section 75, p. 60.

§ 396. —— Joinder of Parties — Discretion of Court.—Such corporations or persons as the court may deem necessary or proper to be joined as parties, in order to make its judgment, order or writ effective, may be joined as parties.[113]

§ 397. —— Final Judgment on Hearing. — The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that the writ of mandamus or injunction issue or be made permanent as prayed for in the petition, or in such modified or other form as will afford appropriate relief.[114]

§ 398. —— Appeal to Supreme Court — How Taken.—An appeal may be taken to the supreme court from such final judgment in the same manner and with the same effect, subject to the provisions of this act, as appeals are taken from judgments of the superior court in other actions for mandamus or injunction.[115]

[113] Ib., p. 61.

In proceedings in suits against substituted rates under Wisconsin Railroad Commission Act (sections 16 and 16e), it was held that a statutory suit to enforce the order of the Commission, similar to the suit provided for in the Oregon Railroad Commission Act, section 32 (Oregon Laws 1907, c. 53, p. 87), cannot be joined with another suit to prevent a third party from violating the order of the Commission, notwithstanding the provision of the statute as to the joinder of actions. City of Superior v. Douglas County Telephone Co. (Wis.), 122 N. W. 1023.

[114] Section 75, p. 61.

[115] Ib.

On appeal to the supreme court, point cannot be raised when no attention was called to it on motion for new trial, although there was a general exception to instruction allowing interest in addition to treble damages. Hooper v. Chicago, M. & St. P. R. Co., 91 Iowa, 639, 60 N. W. 487.

Unconstitutionality of statute providing for Railroad Commission, in that it deprives of right of jury trial, cannot be raised for the first time on appeal. Hooper v. Chicago, M. & St. P. R. Co., 91 Iowa, 639, 60 N. W. 487.

§ 399. Penalties for Violation by Public Utilities. Any public utility which violates or fails to comply with any provision of the constitution of this state or of this act, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement or any part or provision thereof, of the Commission, in a case in which a penalty has not hereinbefore been provided for such public utility, is subject to a penalty of not less than five hundred dollars nor more than two thousand dollars for each and every offense.[116]

[116] Section 76 (a), p. 61.

In action against railroad company to recover treble damages allowed by the Illinois statute for a violation of its provisions, the two years' limitation may properly be pleaded, as in that state action for a statutory penalty must be brought within two years next after the cause of action accrues. Chicago, B. & Q. R. Co. v. Jones, 149 Ill. 361, 37 N. E. 247.

Treble damages being provided for by the statute, interest cannot be recovered, Hooper v. Chicago, M. & St. P. R. Co., 91 Iowa, 639, 60 N. W. 487.

The penalties imposed by the Oregon Act are not exorbitant or burdensome for willful violation for the provisions of the act, and do not interpose any impediment to prevent carriers concerned from having ample recourse to any court having jurisdiction to grant relief. Oregon R. & Nav. Co. v. Campbell, 173 Fed. 957, 990.

The penalties imposed by the Oregon Act were intended to be of a nature to practically deprive a carrier of the protection of the law. The act provided that the railroad company must either obey the order of the Commission or resort to a court for an injunction, suspending or staying the order; but that if resort be had to injunction, the company shall give a bond conditioned (1) to answer for all damages caused by the delay in the enforcement of the order of the Commission (2) and all penalties that would attach against the company; and (3) for restitution of whatever sum for transportation service any person or corporation shall be compelled to pay in excess of the sum such person or corporation would have been compelled to pay if the order of the Commission had not been suspended.

The first condition, relating to damages that would ensue by reason of delay in enforcing the order, does not involve penalties of a character to practically deprive carrier of the equal protection of the law.

Second condition—in relation to penalties that would attach against the carrier—relates to the provision specified in section 51 of the act, to the effect that any railroad company omitting to do any act made or thing required to be done by it shall be rendered liable to the first

§ 400. —— Each Day's Continuance a Separate Offense.—Every violation of the provisions of this act or of any order, decision, decree, rule, direction, demand or requirement of the Commission, or any part or portion thereof by any corporation or person is a separate and distinct offense, and in case of a con-

person, firm or corporation injured thereby in treble the amount of damage sustained in consequence of such violation, together with reasonable attorney fees. Just what damages would ensue to any person, or corporation, or to the state for a refusal to obey an order fixing the rates are not patent; but this item, if there was any damage, is expressly provided for by the three conditions above named, which exclude it from the obligation of the second. The damage, whatever it may be, cannot be large or oppressive, even if trebled.

By section 52, four things are enumerated and a penalty attached, if any officer, agent or employee shall fail or refuse to do and perform the same, the penalty being a fine of from one hundred dollars to one thousand dollars, and the recovery of from five hundred dollars to one thousand dollars from the company for each offense when the officer, agent or employee acts in obedience to its direction. These enumerated things are as follows: (1) Shall refuse to fill out and return any blanks required by the act; or (2) shall refuse to answer any question therein propounded; (3) shall give false answers to any such questions; or (4) shall, upon proper demand, refuse to exhibit any books, papers, accounts, etc., in his possession or under his control. But none of these things are covered by the second condition in the bond required to be given as above specified.

Section 53 provides that if the railroad shall violate any provision of the act, or shall fail or refuse to obey any lawful requirement of the Commission or judgment or decree of the court, for every such offense it shall forfeit to the state from one hundred dollars to ten thousand dollars.

It is thought that the penalties above specified would not be covered by the bond in the case of injunction staying execution of the order, because the injunction is provided for by law, and the company would be availing itself of a lawful right, and, while so doing, it would seem that it could not at the same time be held for a violation of section 53, by a refusal to obey an order of the Commission or a judgment or decree of the court. Hence the bond executed can be no impediment of substantial moment, standing in the way of the carrier obtaining a speedy and complete adjudication touching the reasonableness of the rates fixed by the Commission. Oregon R. & Nav. Co. v. Campbell, 173 Fed. 957, 989.

The penalties provided by section 52 of the Oregon Railroad Commission Act (Laws 1907, c. 53, p. 97) are not unconstitutionally exorbitant

tinuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.[117]

§ 401. —— Construction—Act of Omission of Officer, etc.—In construing and enforcing the provisions of this act relating to penalties, the act, omission or failure of any officer, agent or employee of any public utility, acting within the scope of his official duties or employment, shall in every case be and be deemed to be the act, omission or failure of such public utility.[118]

§ 402. Penalties for Violation by Officers, etc.—Misdemeanor.—Every officer, agent or employee of any public utility, who violates or fails to comply with, or who procures, aids or abets any violation by any

or burdensome for willful violation of the provision of the act; and there is no intendment in the statute to prevent the railroad companies concerned from ample recourse to any court having jurisdiction to grant relief, nor are the penalties so enormous as to deter the company from seeking relief from any court otherwise than in the manner provided in section 33 of that act as amended in 1909 (Laws 1909, c. 103, p. 163); the penalties are not of such a nature as to practically deprive the railroad aggrieved of the equal protection of the laws. Oregon R. & Nav. Co. v. Campbell, 173 Fed. 990.

Penalties imposed by section 53 of the Oregon Railroad Commission Act are not so exorbitant or burdensome as to prevent railroad companies concerned from having ample recourse to any court possessing jurisdiction for relief against an order of the Commission. Oregon R. & Nav. Co. v. Campbell, 173 Fed. 990.

An order of the Commission requiring the revision of the schedule of local rates within the states being made, the railroad is chargeable with but one penalty under section 53 of the Oregon Railroad Commission Act (Laws 1907, c. 53, p. 95) for a violation of the act in failing to obey the order, and not an accumulation of penalties for a repetition of offenses from day to day, for each particular shipment transported. The section, being penal, must receive a strict construction and no accumulation of offenses can be carved out of it, unless they are created by the strict letter of the statute. Oregon R. & Nav. Co. v. Campbell, 173 Fed. 989.

[117] Section 76 (b), p. 61.

[118] Section 76 (c), p. 61.

public utility of any provision of the constitution of this state or of this act, or who fails to obey, observe or comply with any order, decision, rule, direction, demand or requirement or any part or provision thereof, of the Commission, or who procures, aids or abets any public utility in its failure to obey, observe and comply with any such order, decision, rule, direction, demand or requirement, or any part or provision thereof in a case in which a penalty has not hereinbefore been provided for such officer, agent or employee, is guilty of a misdemeanor and is punishable by a fine not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.[119]

§ 403. Penalties for Violations by Corporations Other Than Public Utilities.—Every corporation, other than a public utility, which violates any provision of this act, or which fails to obey, observe or comply with any order, decision, rule, direction, demand or requirement, or any part or provision thereof, of the Commission, in a case in which a penalty has not hereinbefore been provided for such corporation, is subject to a penalty of not less than five hundred dollars nor more than two thousand dollars for each and every offense.[120]

§ 404. Penalties for Violations by Persons Other Than Officers, etc.—Every person who, either individually, or acting as an officer, agent or employee of a corporation other than a public utility, violates any provision of this act, or fails to observe, obey or comply with any order, decision, rule, direction, demand or requirement, or any part or portion thereof, of the Commission, or who procures, aids or abets any such

[119] Section 77, p. 61.
[120] Section 78, p. 61.

public utility in its violation of this act, or in its failure to obey, observe or comply with any such order, decision, rule, direction, demand or requirement, or any part or portion thereof, in a case in which a penalty has not hereinbefore been provided for such person, is guilty of a misdemeanor, and is punishable by a fine not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.[121]

§ 405. **Suit to Recover Penalties—Jurisdiction.**—Actions to recover penalties under this act shall be brought in the name of the people of the state of California, in the superior court in and for the county, or city and county, in which the cause or some part thereof arose, or in which the corporation complained of, if any, has its principal place of business, or in which the person, if any, complained of, resides.[122]

§ 406. —— **Brought and Prosecuted by Whom.**—Such action shall be commenced and prosecuted to final judgment by the attorney of the Commission.[123]

§ 407. —— **What may be Recovered—Procedure and Evidence.**—In any such action, all penalties incurred up to the time of commencing the same may be sued for and recovered. In all such actions, the procedure and rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided.[124]

§ 408. —— **Disposition of Penalties and Costs Recovered.**—All fines and penalties recovered by the state in any such action, together with the costs thereof,

[121] Section 79, p. 62.
[122] Section 80, p. 62.
[123] Ib.
[124] Ib.

shall be paid into the state treasury to the credit of the general fund.[125]

§ 409. —— Compromise or Discontinuance of Action.—Any such action may be compromised or discontinued on application of the Commission upon such terms as the court shall approve and order.[126]

§ 410. Contempt Proceedings—Punishment.—Every public utility, corporation or person which shall fail to observe, obey or comply with any order, decision, rule, regulation, direction, demand or requirement, or any part or portion thereof, of the Commission or any commissioner shall be in contempt of the Commission, and shall be punishable by the Commission for contempt in the same manner and to the same extent as contempt is punished by courts of record.[127]

§ 411. —— Remedy Cumulative and not a Bar to Other Remedies Prescribed.—The remedy prescribed in this section shall not be a bar to or affect any other remedy prescribed in this act, but shall be cumulative and in addition to such other remedy or remedies.[128]

[125] Ib.
[126] Ib.
[127] Section 81, p. 62.
[128] Ib.

CHAPTER X.

CONSTRUCTION—SAVING CLAUSE—APPROPRIATION— REPEAL.

§ 412. Effect of Act on Existing Powers of Any City, etc.—Vote to be Taken.
§ 413. —— Election to Continue Power—Subsequent Surrender of Powers, How.
§ 414. Effect of Act on Pending Actions and Proceedings.
§ 415. —— Ratification of Act and Proceedings of Commission.
§ 416. —— Cause of Action shall not Abate—Action may be Brought Under This Act.
§ 417. —— Orders, Decisions, etc., of Commission—Continued in Force.
§ 418. —— Act to be Construed Continuance of Former Acts of 1911.
§ 419. Constitutionality—Provision as to.
§ 420. —— Declaration of Intent of Legislature.
§ 421. Interstate Commerce.
§ 422. Appropriation.
§ 423. Repeals.
§ 424. Time of Going into Effect.

§ 412. Effect of Act on Existing Powers of Any City, etc.—Vote to be Taken.—This act shall not affect such powers of control over any public utility vested in any city and county or incorporated city or town as, at an election to be held pursuant to laws to be hereafter passed by the legislature, a majority of the qualified electors voting thereon of such city and county, or incorporated city or town, shall vote to retain, and until such election such powers shall continue unimpaired in such city and county or incorporated city or town; but if the vote so taken shall not favor the continuation of such powers, they shall thereafter vest in the Commission.[1]

§ 413. —— Election to Continue Power—Subsequent Surrender of Powers, How.—Provided, that

[1] Extraordinary Session 1911, c. 14, § 82, p. 62.

Subsequent legislation is to be considered as an aid to the interpretation of prior legislation upon the same subject. Tiger v. Western Investment Co., 221 U. S. 286, 31 Sup. Ct. 578, 55 L. ed. 738.

where any such city and county or incorporated city or town shall have elected to continue any powers respecting public utilities, it may, by a vote of a majority of its qualified electors voting thereon, thereafter surrender such powers to the Commission in the manner to be prescribed by the legislature; or if such municipal corporation shall have surrendered any powers to the Commission, it may, by like vote, thereafter reinvest itself with such power.[2]

§ 414. Effect of Act on Pending Actions and Proceedings.—This act shall not affect pending actions or proceedings brought by or against the people of the state of California or the Commission, or by any other person or corporation under the provisions of chapters 20 or 386 of the Laws of 1911, but the same may be prosecuted and defended with the same effect as though this act had not been passed. Any investigation, hearing, or examination undertaken, commenced, instituted or prosecuted prior to the taking effect of this act may be conducted and continued to a final determination in the same manner and with the same effect as if it had been undertaken, commenced, instituted or prosecuted in accordance with the provisions of this act.[3]

§ 415. —— Ratification of Act and Proceedings of Commission.—All proceedings hitherto taken by the Commission in any such investigation, hearing or examination are hereby ratified, approved, validated and confirmed and all such proceedings shall have the same force and effect as if they had been undertaken, commenced, instituted, and prosecuted under the pro-

[2] Section 82, p. 63.

[3] Section 83 (a), p. 63.

Strict construction to be given to a law admitting of but one penalty, and that of the harshest possible character. Chicago & Alton R. Co. v. People ex rel. Koerner, 67 Ill. 11.

visions of this act and in the manner herein prescribed.[4]

§ 416. —— Cause of Action shall not Abate—Action may be Brought Under This Act.—No cause of action arising under the provisions of chapters 20 or 386 of the Laws of 1911 shall abate by reason of the passage of this act, whether a suit or action has been instituted thereon at the time of the taking effect of this act or not, but actions may be brought upon such causes in the same manner, under the same terms and conditions, and with the same effect as though said chapters had not been repealed.[5]

§ 417. —— Orders, Decisions, etc., of Commission —Continued in Force.—All orders, decisions, rules or regulations heretofore made, issued or promulgated by the Commission shall continue in force and have the same effect as though they had been lawfully made, issued or promulgated under the provisions of this act.[6]

§ 418. —— Act to be Construed Continuance of Former Acts of 1911.—This act, in so far as it embraces the same subject matter, shall be construed as a continuation of chapter 20 of the Laws of 1911, approved February 10, 1911, and chapter 386 of the Laws of 1911, approved April 6, 1911.[7]

§ 419. Constitutionality—Provision as to.—If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such

[4] Section 83 (a), p. 63.
[5] Section 83 (b), p. 63.
[6] Section 83 (c), p. 63.
[7] Section 83 (d), p. 63.

decision shall not affect the validity of the remaining portions of this act.[8]

§ 420. —— Declaration of Intent of Legislature.—The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.[9]

§ 421. Interstate Commerce.—Neither this act nor any provision thereof, except when specifically so stated, shall apply or be construed to apply to commerce with foreign nations or commerce among the several states of this Union, except in so far as the

[8] Section 84, p. 63.

Legislative interpretation contemporary with constitutional provision is entitled to great weight, and, being correct, will not be disturbed. Mo. O. & G. R. Co. v. State (Okl.), 119 Pac. 117.

Legislature cannot authoritatively fix meaning of constitution, but where the meaning of the constitution is doubtful, contemporaneous and long-continued construction thereof by the legislature is entitled to great deference, and may be supposed to reflect the same policy and modes of reasoning which prevailed among the framers of the constitution. Railroad Commission v. Market St. R. Co., 132 Cal. 677, 64 Pac. 1055.

The fact that a provision in a statute is declared to be unconstitutional will not affect the balance of the act where such unconstitutional portion is not of such a nature as to be inseparable from the balance of the act, but it can be eliminated and the balance of the act remain and be enforced as an accomplished act. Thus the supreme court has held that the provision of the irrigation law of 1897 for an appeal to the superior court from the determination of the board of supervisors, having been declared to be unconstitutional by the supreme court in the case of Chinn v. Superior Court, 156 Cal. 478, 105 Pac. 580, does not destroy the act as a whole. The act would have been valid without such provision. The general machinery of the law provides ample protection to the land owners and every reasonable opportunity to correct specific abuses (Inglin v. Hoppin, 156 Cal. 483, 105 Pac. 582), so that the act can well stand as an entire and complete scheme after the elimination of the provision touching appeal. In re Bonds of So. San Joaquin Irr. Dist. (Cal.), 119 Pac. 198.

[9] Section 84, p. 63.

same may be permitted under the provisions of the constitution of the United States and the acts of Congress.[10]

§ 422. **Appropriation.**—All moneys which are paid into the state treasury by the Commission up to and including the thirtieth day of June, 1913, under the provisions of section 57 of this act, and credited to the Railroad Commission Fund, are hereby appropriated, to be used by the Commission in carrying out the provisions of this act, and the controller is hereby directed to draw his warrant on said fund from time to time in favor of the Commission for the amounts expended under its direction, and the treasurer is hereby authorized and directed to pay the same.[11]

§ 423. **Repeals.**—The Railroad Commission Act, approved February 10, 1911, and the act entitled "An act to amend the Railroad Commission Act by amending section 15 thereof relating to powers and duties of the Railroad Commission of the state of California, and to amend section 37 thereof relating to free and reduced rate transportation for freight and passengers," approved April 6, 1911, and all acts or parts of acts inconsistent with the provisions of this act, are hereby repealed.[12]

§ 424. **Time of Going into Effect.**—This act shall take effect ninety days after the final adjournment of this session of the legislature.[13]

[10] Section 85, p. 64.
[11] Section 86, p. 64.
[12] Section 87, p. 64.
[13] Section 88, p. 64.

CHAPTER XI.

MUNICIPAL RETENTION OR SURRENDER OF POWERS.

An act to provide for submitting to the qualified electors of every city and county, or incorporated city or town, in this state the question whether such city and county, or incorporated city or town, shall retain the powers of control vested therein respecting all or any public utilities, and providing further for elections thereafter to surrender such powers in case the qualified electors of any such city and county, or incorporated city or town, shall have voted to retain such powers or to reinvest such city and county, or incorporated city or town, with such powers, in case the qualified electors thereof have voted to surrender such powers.[1]

The people of the State of California do enact as follows:

Section 1. Any city and county, or incorporated city or town, may retain its powers of control vested therein respecting any one or more classes of public utilities and may thereafter surrender such powers to the Railroad Commission of the state of California, hereinafter called the Railroad Commission, or may reinvest itself with such powers as it may have surrendered to the Railroad Commission, all as in this act provided.

Sec. 2. The term "municipal corporation," as used in this act, shall be construed to mean a city and county, or an incorporated city or town. The term "legislative body," as used in this act, shall be construed to mean the board of supervisors, municipal

[1] Extraordinary Session 1911, c. 40, pp. 168–175.

council, Commission or other legislative or governing body of a municipal corporation.

Sec. 3. The terms "railroad corporation," "street railroad corporation," "common carrier," "gas corporation," "electrical corporation," "water corporation," "telephone corporation," "telegraph corporation," "wharfinger," "warehouseman" and "public utility," as used in this act, shall severally have the same meaning as is given to them, respectively, in section 2 of the act known as the "Public Utilities Act."

Sec. 4. The question whether any municipal corporation shall retain its powers of control respecting one or more classes of public utilities may be submitted to the qualified electors of such municipal corporation, as provided in this act, either at a general municipal election or at a special election held therein. Such question may be so submitted, either in pursuance of an ordinance of intention adopted by a vote of three-fifths of all the members of the legislative body of such municipal corporation, declaring that the public interest requires the submission of, and that it is the intention of such legislative body to submit, such question to a vote of the qualified electors of such municipal corporation, or in pursuance of a petition of qualified electors of such municipal corporation, as hereinafter provided. Such ordinance of intention or such petition, as the case may be, shall contain the propositions proposed to be so submitted, as set forth in section 6 of this act. Such petition shall be signed by qualified electors of such municipal corporation, equal in number to ten per centum of such qualified electors, computed upon the total number of votes cast in such municipal corporation for all candidates for governor at the last preceding general election prior to the filing of such petition at which a governor was elected. Such petition may consist

of separate papers; provided, that if any paper consists of more than one sheet, it shall be securely fastened together at the top. The signatures need not all be appended to one sheet or paper. Each such paper shall have attached thereto, at the bottom of the last sheet thereof, the affidavit of a qualified elector of such municipal corporation, stating that all of the signatures on each sheet thereof were made in his presence, and that to the best of his knowledge and belief each signature is the genuine signature of the person whose name purports to be thereto subscribed. Such petition shall be filed with the clerk of the legislative body of such municipal corporation. Within ten days from the date of the filing of such petition, said clerk shall examine the petition and ascertain from the record of the registration of the electors of the city and county, or of the county in which such municipal corporation is situated, whether the petition is signed by the requisite number of the qualified electors of such municipal corporation; and if requested by said clerk, the said legislative body of said municipal corporation shall authorize him to employ persons specially to assist him in the work of examining such petition and shall provide for their compensation. Upon the completion of such examination, said clerk shall forthwith attach to said petition his certificate, properly dated, showing the result of such examination. If from such examination, said clerk shall find that said petition is signed by the requisite number of qualified electors, he shall certify that the same is sufficient; but if, from such examination, he shall find that said petition is not signed by such requisite number of qualified electors, he shall certify to the number of qualified electors signing such petition and to the number of qualified electors required to make such petition sufficient. If by the certificate of said clerk the petition is shown to be in-

sufficient, it may be amended by filing a supplemental petition within ten days from the date of such certificate. Said clerk shall, within ten days from the filing of such supplemental petition, make like examination of the same and certify to the result of such examination as hereinbefore provided. If the certificate of the clerk shall show any such petition, or any such petition together with a supplemental petition, to be insufficient, it shall be retained by him and kept as a public record, without prejudice, however, to the filing of a new petition to the same effect. But if, by the certificate of the clerk, such petition, or such petition together with a supplemental petition, is shown to be sufficient, the clerk shall forthwith present the same to the legislative body of such municipal corporation. The sufficiency or insufficiency of such petition shall not be subject to review by such legislative body. After the election held in pursuance of such petition, the sufficiency of such petition in any respect shall not be subject to judicial review or be otherwise questioned. In any city and county having a board of election commissioners and a registrar of voters, the clerk of the legislative body thereof shall immediately upon the filing of any petition with him, transmit the same to such board of election commissioners, who shall forthwith deliver such petition to said registrar of voters, who shall perform all the duties herein required to be performed in other municipal corporations by the clerk of the legislative body thereof, respecting the examination and certification of such petition. Such registrar of voters shall, upon making his certificate, forthwith return said petition to said clerk, who shall thereupon present such petition and the certificate thereto attached to the legislative body of such municipal corporation as hereinbefore in this section provided.

Sec. 5. Upon the adoption of such ordinance of intention, or the presentation as aforesaid of such petition, as provided in section 4 of this act, the legislative body of such municipal corporation shall, by ordinance, order the holding of a special election for the purpose of submitting to the qualified electors of such municipal corporation the propositions set forth in such ordinance of intention or in such petition, as the case may be, which propositions shall be those set forth in section 6 of this act, or such legislative body shall, by ordinance, order the submission of such propositions at a general municipal election, as hereinafter provided. Such special election shall be held not less than twenty days nor more than sixty days after the adoption of the ordinance of intention provided for in section 4 of this act, or the presentation of such petition to said legislative body; provided, that if a general municipal election shall occur in said municipal corporation not less than twenty days nor more than sixty days after the adoption of said ordinance of intention or the presentation of said petition to said legislative body, said propositions may be submitted at such general municipal election, in the same manner as other propositions are required by law to be submitted at general municipal elections in such municipal corporation. Every special election held in any municipal corporation under the provisions of this act, shall be called by the legislative body thereof, by ordinance, which shall specify the propositions to be submitted at such election and the date thereof, and, where provision is not otherwise made by law, shall establish the election precincts therefor and designate the polling places therein, and the names of the election officers for each such precinct. Such ordinance shall, prior to such election, be published five times in a daily newspaper printed and published in such municipal corporation, or twice in a weekly news-

paper printed and published therein, if there be no such daily newspaper; provided, that if no such daily or weekly newspaper be printed and published in such municipal corporation, the clerk of said legislative body shall post a copy of said ordinance in three public places in such municipal corporation at least ten days prior to such election. The propositions submitted under this section at any general municipal election or at any special election shall be the same as those set forth in section 6 of this act.

Sec. 6. The ballots to be used at any general municipal election or at any special election, at which is submitted the question whether a municipal corporation shall retain its powers of control respecting public utilities shall have printed thereon, in addition to the other matters required by law, the following propositions:

"Proposition No. 1. Shall ..... (name of municipal corporation) retain its powers of control over railroad corporations?"

"Proposition No. 2. Shall ..... (name of municipal corporation) retain its powers of control over street railroad corporations?"

"Proposition No. 3. Shall ..... (name of municipal corporation) retain its powers of control over common carriers other than railroad and street railroad corporations?"

"Proposition No. 4. Shall ..... (name of municipal corporation) retain its powers of control over gas corporations?"

"Proposition No. 5. Shall ..... (name of municipal corporation) retain its powers of control over electrical corporations?"

"Proposition No. 6. Shall ..... (name of municipal corporation) retain its powers of control over telephone corporations?"

"Proposition No. 7. Shall ..... (name of municipal corporation) retain its powers of control over telegraph corporations?"

"Proposition No. 8. Shall ..... (name of municipal corporation) retain its powers of control over water corporations?"

"Proposition No. 9. Shall ..... (name of municipal corporation) retain its powers of control over wharfingers?"

"Proposition No. 10. Shall ..... (name of municipal corporation) retain its powers of control over warehousemen?"

Opposite each such proposition to be voted upon, and to the right thereof, the words "Yes" and "No" shall be printed on separate lines, with voting squares. Any voter desiring to vote in favor of the retention of the powers of control of such municipal corporation respecting any particular class of public utility, shall stamp a cross (×) in the voting square after the printed word "Yes" opposite the proposition as to such class, and any voter desiring to vote against the retention of such powers of such municipal corporation respecting any particular class of public utility, shall stamp a cross (×) in the voting square after the printed word "No" opposite such proposition.

Sec. 7. If the propositions specified in section 6 of this act shall have been submitted at a special election in any municipal corporation, then the legislative body or other body or board charged with the duty of canvassing the returns and declaring the result of elections in such municipal corporation, shall meet at their usual place of meeting on the first Monday after such election to canvass the returns and declare the result thereof. Immediately upon the completion of such canvass, or upon the completion of the canvass of the returns of any general municipal election at

which such propositions shall have been submitted, such legislative body or other body or board charged with said duty shall make an order declaring the result of the election upon such propositions and shall cause the same to be entered upon its minutes, which order shall show the total number of votes cast upon each such proposition, and the number of votes cast respectively in favor of and against each such proposition. If it shall appear from the result of such election, as so declared, that a majority of the qualified electors of such municipal corporation voting on any proposition submitted, as provided in section 5 of this act, shall have voted to retain the powers of control of such municipal corporation respecting any particular class of public utility, such municipal corporation shall be deemed to have elected to retain such powers of control respecting such class of public utility, and such powers shall be exercised by such municipal corporation until the same may be surrendered as hereinafter provided; and if it shall appear from the result of such election, as so declared, that a majority of such qualified electors so voting on any such proposition shall have voted not to retain such powers respecting any class of public utility, such municipal corporation shall be deemed to have elected not to retain such powers of control respecting such class of public utility, and such power of control shall thereafter vest in and be exercised by the Railroad Commission as provided by law. Immediately upon the entry of the order declaring the result of the election as to such proposition, the clerk of the legislative body or the registrar of voters in any municipal corporation having a board of election commissioners and a registrar of voters, shall make copies, in duplicate, of such order, and shall attach to each such copy his certificate under the seal, if any, of such municipal corporation, or of such board of election commissioners, certifying

that the same is a true and correct copy of such order. Said clerk or registrar of voters, as the case may be, shall forthwith file one of said copies in the office of the Railroad Commission of the state of California and the other in the office of the Secretary of State. Immediately upon the filing of such certified copy of such order in the office of the Railroad Commission, the powers of control theretofore vested in such municipal corporation over any class or classes of public utilities which a majority of the qualified electors of such municipal corporation voting thereof[n] shall have voted not to retain, as shown by such order shall thereupon vest in and be exercised by the Railroad Commission, until such municipal corporation shall reinvest itself with such powers of control as hereinafter provided.

Sec. 8. Any municipal corporation which shall have voted to retain the powers of control vested therein respecting any class or classes of public utilities, or which may have reinvested itself with such power, as hereinafter provided, may thereafter surrender its powers of control as to such class or classes of public utilities at a general municipal election or a special election therein, called for that purpose. The ballots to be used at such election shall have printed thereon, in addition to the other matters required by law, separate propositions as to each of the classes of public utilities as to which such municipal corporation may theretofore have voted to retain its powers of control or with which it may have reinvested itself. As to each of such classes of public utilities, and in addition to the other matters required by law to be printed thereon, a proposition shall be printed on the ballot to be used at such election in substantially the following form: "Shall ..... (name of municipal corporation) surrender its powers of control over ..... (here insert class of public utility) to the

railroad commission?" Opposite each such proposition to be voted upon, and to the right thereof, the words "Yes" and "No" shall be printed on separate lines, with voting squares. Any elector desiring to vote to surrender the powers of control of such municipal corporation over any class of public utility specified on the ballot, shall stamp a cross (×) in the voting square opposite the printed word "Yes," after the proposition as to such class; and any elector desiring to vote not to surrender the powers of control of such municipal corporation over such class of public utility, shall stamp a cross (×) in the voting square opposite the printed word "No" after the proposition as to such class. The provisions of sections 4, 5 and 7 of this act, in so far as applicable, shall govern elections called, conducted and held under the provisions of this section and to general municipal elections at which such propositions shall be submitted. If it shall appear from the result of such election declared as provided in section 7 of this act, that a majority of the qualified electors of such municipal corporation voting on any proposition submitted as provided in this section, shall have voted to surrender the powers of control of such municipal corporation respecting any particular class of public utility, such municipal corporation shall be deemed to have surrendered its powers of control as to such class of public utility to the Railroad Commission, and such powers shall thereafter vest in and be exercised by the Railroad Commission, as provided by law, upon the filing, in the office of the Railroad Commission, of a certified copy of the order declaring the result of such election until such municipal corporation shall reinvest itself with such powers as hereinafter provided; and if it shall appear from the result of such election, as declared, that a majority of such qualified electors voting on any such proposition shall have

voted not to surrender such powers of control respecting any particular class of public utility, such powers of control shall continue in such municipal corporation; provided, however, that such powers of control may thereafter be surrendered by such municipal corporation at any subsequent election at which the question of such surrender may again be submitted under the provisions of this act.

Sec. 9. Any municipal corporation that shall have surrendered to the Railroad Commission powers of control respecting any class of public utility may thereafter reinvest itself with such powers by a vote of the qualified electors thereof taken at a general municipal election or at a special election. The ballots to be used at such election shall have printed thereon, in addition to the other matters required by law, separate propositions as to each class of public utility designated in the petition for such election or in the ordinance of intention. As to each such class of public utility, a proposition shall be printed on the ballot in substantially the following form: "Shall ..... (name of municipal corporation) reinvest itself with powers of control over ..... (class of public utility)?" Opposite each such proposition to be voted upon and to the right thereof, the words "Yes" and "No" shall be printed on separate lines, with voting squares. Any elector desiring to vote to reinvest such municipal corporation with powers of control respecting any class of public utility designated on the ballot shall stamp a cross (×) in the voting square after the printed word "Yes" opposite the proposition as to such class, and any elector desiring to vote not to reinvest such municipal corporation with powers respecting such class of public utility shall stamp a cross (×) in the voting square after the printed word "No" opposite such proposition. The provisions of sections 4, 5 and 7 of this act, in so far as applicable, shall ap-

ply to elections called, conducted and held under the provisions of this section and to general municipal elections at which such propositions shall be submitted. If it shall appear from the result of such election, declared as provided in said section 7, that a majority of the qualified electors of such municipal corporation voting on any proposition submitted as provided in this section shall have voted to reinvest such municipal corporation with powers of control respecting any particular class of public utility, such municipal corporation shall be deemed to have reinvested itself with such powers, and upon the filing in the office of the Railroad Commission of a certified copy of the order declaring the result of such election, the powers of control with which such municipal corporation shall have voted to reinvest itself, as shown by such order, shall cease to be exercised by the Railroad Commission, and shall vest in and be exercised by such municipal corporation; and if it shall appear from the result of such election, as declared, that a majority of the qualified electors of such municipal corporation voting on any such proposition, as provided in this section, shall have voted not to reinvest such municipal corporation with powers of control respecting any particular class of public utility, such powers of control shall continue in and be exercised by the Railroad Commission; provided, that such municipal corporation may thereafter reinvest itself with such powers of control at any subsequent election at which such question may be again so submitted under the provisions of this act.

Sec. 10. The holding of a special election or elections, or the submission of propositions at any general municipal election, under any of the provisions of this act, shall not be construed to preclude the holding of a subsequent special election or elections or the subsequent submission of propositions at a general munici-

pal election or elections, on the question of the retention, surrender or reinvestment by a municipal corporation of its powers of control respecting any class or classes of public utilities, as in this act provided; provided, that not more than one such special election shall be held within any period of twelve months.

Sec. 11. Except as otherwise in this act provided, the holding and conducting of elections under the provisions of this act, the form of the ballots used, the opening and closing of the polls, the canvass of the returns and the declaring of the result shall conform, as nearly as may be, to such laws as shall now or hereafter be applicable to special municipal elections held in the municipal corporation affected. [Chapter 40 of Laws of Extraordinary Session of Legislature 1911, approved January 2, 1912, p. 168.]

CHAPTER XII.

RULES OF PRACTICE AND PROCEDURE GOVERNING FORMAL MATTERS BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Adopted March 13, 1912.

Effective March 23, 1912

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5. Application.
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Rule XVII. Increases in Charges—Applications for Permission to Make.

Rule XVIII. Long and Short Haul Rule: Thirty Day Notice Rule—Applications for Relief From.

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Rule XX. Extensions of Time to File Required Reports, Statements or Data or to Comply with Commission's Orders—Applications for.

Rule XXI. Other Applications.

Rule XXII. Deviations from Rules—Authorizations for.

Rule XXIII. Amendment of Rules.

Rule XXIV. Forms Prescribed for Use.

The following rules of practice and procedure are adopted by the Railroad Commission of the state of California in accordance with the provisions of section 53 of the Public Utilities Act:

Rule I.. Definitions.—(1) *The Term "Public Utility,"* when used in these rules, includes every common carrier, pipe-line corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, wharfinger and warehouseman, as those terms are defined in section 2 of the Public Utilities Act.

(2) *The Term "Commission,"* when used in these rules, means the Railroad Commission of the State of California.

(3) *The Term "Formal Proceeding,"* when used in these rules, means a proceeding which contemplates a hearing before the Commission or a commissioner sitting in a judicial or quasi-judicial capacity. A formal proceeding may be either (a) a complaint or (b) an application.

(4) *The Term "Complaint,"* when used in these rules, means a formal proceeding, whether brought upon the Commission's own motion or upon complaint of a third party, having for its object the rendition of an order or decision which can be enforced by the Commission.

(5) *The Term "Application,"* when used in these rules, means a formal proceeding brought by a public utility, for the purpose of securing the Commission's authorization or permission to perform an act.

(6) *The Term "Financial Condition,"* when used in these rules with reference to an application, means the financial condition of the applicant as shown by a schedule or schedules, annexed to the petition and properly referred to therein, and showing:

(a) Amount and kinds of stock authorized.

(b) Amount and kinds of stock issued and outstanding.

(c) Terms of preference of all preferred stock, whether cumulative or participating, or on dividends or assets, or otherwise.

(d) Brief description of each mortgage upon property of applicant, giving date of execution, name of mortgagor, name of mortgagee or trustee, amount of indebtedness authorized to be secured thereby and amount of indebtedness actually secured.

(e) Number and amount of bonds authorized and issued, giving name of the public utility which issued

the same, describing each class separately, giving date of issue, par value, rate of interest, date of maturity and how secured.

(f) Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of any portion of such indebtedness upon or by any corporation or person, if the original liability has been transferred.

(g) Amount of interest paid during previous fiscal year and rate thereof, with amount paid at each rate, if different rates were paid, upon each issue of indebtedness.

(h) Rate and amount of dividends paid during the five previous fiscal years and the amount of capital stock on which dividends were paid each year.

(i) Detailed statement of earnings and expenditures for and balance sheet showing conditions at close of the last fiscal year, unless already filed with the commission as part of the annual report, in which case a reference to the filing should be given.

Rule II. Sessions of Commission.—The office of the Commission shall be in San Francisco, California, and shall always be open, legal holidays and nonjudicial days excepted. The regular monthly session of the Commission shall be held in its office on the second Tuesday of every month at 10:30 o'clock A. M., at which time any person having business with the Commission may appear and be heard. The Commission will hold other sessions at San Francisco and elsewhere in the state of California at such times as it may designate. The sessions of the Commission shall be public.

Rule III. Secretary to Furnish Information.—The Commission's secretary will, upon request, advise as to the form of complaint, petition, answer or other documents necessary to be filed in any formal proceeding,

and furnish such information from the files of the Commission as will conduce to a full presentation of material facts.

Rule IV. Formal Proceedings — General Matters Applicable to All.—1. *Address of the Commission.* All communications should be addressed to "Railroad Commission of the State of California, San Francisco, California."

2. *Case Numbers.* The secretary shall assign to each formal proceeding a number which the parties shall, before filing, place on all subsequent papers in such proceeding.

3. *Form and Size of Papers Filed.* All pleadings filed with the Commission in formal proceedings shall be printed or typewritten on one side of the paper only, and, as far as practicable, shall be upon paper eight and one-half by thirteen inches in size. Each line and page shall be numbered.

4. *Amendments.* The commission may, in its discretion, allow any pleading to be amended or corrected or any omission therein to be supplied.

5. *Subpoenas.* Subpoenas requiring the attendance of a witness from any place in the state to any designated place of hearing, for the purpose of taking the testimony of such witness orally before the Commission or one or more commissioners may be issued by any commissioner or the secretary.

Subpoenas for the production of books, accounts, papers, waybills and other documents (unless issued upon the Commission's own motion) will only be issued upon application in writing, stating, as nearly as possible, the books, accounts, papers, waybills or other documents desired to be produced.

6. *Service of Papers.* Personal service of papers in all hearings, investigations and formal proceedings

pending before the Commission may be made upon any person upon whom a summons may be served in accordance with the provisions of the Code of Civil Procedure of this state. Service may also be made by mailing in a sealed envelope, registered, with postage prepaid, addressed to any party to such hearing, investigation or formal proceeding or to any person upon whom a summons may be served in accordance with the provisions of the Code of Civil Procedure. If service is made by mailing, and an act is to be performed within a specified time after service, the time for the performance of the act shall begin to run at the time the registered letter is received. When any party has appeared by attorney, service upon the attorney will be deemed proper service upon such party.

7. *Filing or Entry and Service of Orders.* Each order, authorization or certificate made, issued or approved by the Commission shall be in writing and shall be filed with or entered on the records of the Commission, in accordance with the provisions of the Public Utilities Act, and a copy thereof, certified by the secretary under the seal of the Commission, shall be served upon or delivered to the corporation or person complained of, or the applicant, or his or its attorney.

8. *Intervention.* In any formal proceeding, the Commission may permit any corporation, association, body politic or person to intervene and be heard, after opportunity has been given to the party or parties to such proceeding to be heard on such intervention. Leave thus granted shall entitle the intervener to have notice of and to appear at the taking of testimony, to produce and cross-examine witnesses, and to be heard in person or by counsel on the argument.

Rule V. Complaints — Contents and Proceedings Up to Hearing.—1. *Who may Complain.* Complaint may be made by the Commission of its own motion or

by any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization or any body politic or municipal corporation, by complaint in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed to be in violation, of any provision of law or of any order or rule of the Commission.

(a) *Any Public Utility* shall have the right to complain on any of the grounds upon which complaint may be made by other parties.

2. *Contents of Complaint.* Each complaint shall show the venue, "Before the Railroad Commission of the State of California," shall bear a heading showing the name of the complainant and the name of the defendant and shall state—

(a) The full name and postoffice address of the complainant.

(b) The full name and postoffice address of the defendant.

(c) Fully, clearly and with reasonable certainty the act or thing done or omitted to be done, of which complaint is made, with a reference, where practicable, to the law, order or rule, and the section or sections thereof, of which a violation is claimed.

(d) Such other matters or facts, if any, as may be necessary to acquaint the Commission fully with the details of the alleged violation.

3. *Signature of Complaint.* (a) The complaint shall be signed by the complainant or his attorney, if any, and shall show the name and postoffice address of such attorney and shall be verified. Complaints by unincorporated associations may be verified by any officer or director thereof.

(b) Except upon its own motion, the Commission will entertain no complaint as to the reasonableness of

any rates or charges of any gas, electrical, water or telephone corporation, other than a complaint of the corporation itself, unless the same be signed by the mayor or the president or the chairman of the board of trustees or a majority of the council, Commission, or other legislative body of the city and county, or city or town, if any, within which the alleged violation occurred, or not less than twenty-five consumers or purchasers or prospective consumers or purchasers of such gas, electricity, water or telephone service.

4. *Copies to Accompany Complaint.* At the time complainant files his original complaint, he must also file copies thereof equal in number to one more than twice the number of corporations or persons to be served.

5. *Procedure of Commission on Filing of Complaint.* Upon the filing of such complaint, the Commission shall immediately mail a copy thereof to the defendant or defendants and shall also examine the same to ascertain whether it establishes a *prima facie* case and conforms to these rules. At any time within five days after the receipt by a defendant of such copy of such complaint, he may, in writing, call the Commission's attention to any defects therein, but this privilege shall not in anywise, unless the Commission specifically so orders, extend the time within which such defendant is required to satisfy the complaint or to answer. If the Commission is of the opinion that the complaint does not establish a *prima facie* case or does not conform to these rules, it shall notify the complainant or his attorney to that effect, and opportunity may be given to amend the complaint within a specified time. If the complaint is not so amended within such time or such extension thereof as the Commission, for good cause shown, may grant, it will be dismissed.

If the Commission is of the opinion that such complaint, either as originally filed or as amended, does

establish a *prima facie* case and conform to these rules, the Commission shall serve upon each corporation or person complained of, an order under the hand of its secretary and attested by its seal, accompanied by a copy of said complaint, directed to such corporation or person and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten days from the date of service of such order, provided that the Commission may, in particular cases, require the answer to be filed within a shorter time.

6. *Satisfaction of Complaint.* If the defendant desires to satisfy the complaint, he may submit to the Commission, within the time allowed for the satisfaction or answer, a statement of the relief which he is willing to give. On the acceptance of this offer by the complainant and the approval of the Commission, no further proceedings need be taken.

7. *Answer to Complaint.* If satisfaction be not made as aforesaid, the corporation or person complained of must, within the time specified in the order or such extension thereof as the Commission, for good cause shown, may grant, file an answer to the complaint, with admission of service by complainant or his attorney indorsed thereon, or an affidavit of service. The answer must contain a specific denial of such material allegations of the complaint as are controverted by the defendant and also a statement of any new matter constituting a defense. If the answering party has no information or belief upon the subject sufficient to enable him to answer an allegation of the complaint, he may so state in his answer and place his denial upon that ground. The filing of an answer will not be deemed an admission of the sufficiency of the petition, but a motion to dismiss may be made at the hearing.

Rule VI. Hearings and Rehearings—In All Formal Proceedings.—1. *When Hearings will be Given.* Except as otherwise determined in specific cases, the Commission will grant a hearing in the following classes of cases:

(a) When an order to satisfy a complaint or to make answer thereto has been made and the corporation or person complained of has not satisfied the cause of complaint (Rule V).

(b) When an application has been made in a formal proceeding.

2. *Notice of Place of Hearing.* (a) Notice of the day and hour of a hearing shall be served at least ten days before the time set therefor, unless the Commission shall find that public necessity requires the hearing to be held at an earlier date. Hearings shall be held in the office of the Commission in San Francisco unless elsewhere specified in the notice.

(b) In formal applications, the Commission may, in its discretion, give all other corporations or persons who may be affected thereby an opportunity to be heard, either by service upon them of a copy of the petition or by publication of the substance thereof, at the expense of the applicant, for such length of time and in such newspaper or newspapers as the Commission may designate. In such cases, the form of the notice must be submitted to the secretary of the Commission for approval, and proof of the publication thereof must be filed with the secretary at or before the hearing.

3. *Stipulation as to Facts.* The parties to any proceeding or investigation before the Commission may, by stipulation in writing filed with the Commission or entered in the record, agree upon the facts or any portion thereof involved in the controversy, which stipulation shall be regarded and used as evidence at the

hearing. It is desirable that the facts be thus agreed upon whenever practicable. The Commission may in such cases require such additional evidence as it may deem necessary.

4. *Procedure at Hearings.* (a) Witnesses will be examined orally and under oath before the Commission or a commissioner unless the facts are stipulated or the Commission or commissioner otherwise orders.

(b) The complainant must establish the facts upon which he bases his complaint, unless the defendant admits the same or fails to answer the complaint. The defendant must likewise give evidence of the facts alleged in the answer, unless admitted by the complainant, and must fully disclose its defense at the hearing. In case of failure to answer, the Commission will take such proof of the facts as may be deemed proper and reasonable and make such order thereon as the circumstances of the case may require.

(c) If documentary evidence is offered, the Commission, in lieu of requiring the originals to be filed, may, in its discretion, accept certified, or otherwise authenticated, copies of such documents or such portions of the same as may be relevant, or may require such evidence to be transcribed as part of the record.

5. *Adjournments.* Hearings may be adjourned from time to time by or at the direction of the Commission or a commissioner.

6. *Briefs.* The Commission or a commissioner may require the submission of briefs.

7. *Investigations on Commission's Own Motion.* The Commission may at any time, of its own motion, make investigations and order hearings into any act or thing done or omitted to be done by any public utility, which the Commission may believe is in violation of any provision of law or of any order or rule of the Commission. It may also, through its own experts or

employees, or otherwise, secure such evidence as it may consider necessary or desirable in any formal proceeding in addition to the evidence presented by the parties.

8. *Rehearings.* Any party to a formal proceeding or any stockholder or bondholder or other party pecuniarily interested in the public utility affected may apply for a rehearing as to any matters determined by the Commission and specified in the application for the rehearing, and the Commission may grant and hold such rehearing on said matters, if in its judgment sufficient reason therefor be made to appear. Such application shall set forth specifically the ground or grounds on which the applicant considers the Commission's decision or order to be unlawful or erroneous. Rehearings must be asked for before the effective date of the decision or order complained of. In further respects, rehearings will be governed by the provisions of section 66 of the Public Utilities Act.

Rule VII. Switch Connections and Spurs—Complaints for.—When complaint is made for the installation of a switch connection or spur, under the provisions of section 39 of the Public Utilities Act:

1. The complaint, in addition to the requirements of Rule V, 2, must state:

(a) Character and amount of business which will probably be tendered at such connection or spur.

(b) Length of track necessary to be built by defendant and the cost of the same.

2. With the complaint shall be filed:

(a) Map on scale of not less than 100 feet per inch, showing location of existing tracks; property lines; buildings and structures in the vicinity; and the location and length of the proposed switch connection or spur. Such map should be filed in triplicate; one copy

shall be on tracing linen unless waived by the Commission.

Rule VIII. Value of Property of Public Utilities. Formal proceedings instituted by the Commission to ascertain the value of the property of a public utility shall be conducted as specified in section 70 of the Public Utilities Act. Whenever in any formal proceeding the value of the property or a portion thereof of a public utility becomes relevant and pertinent, the Commission may, through its own experts and employees, or otherwise, investigate and ascertain such value.

Rule IX. Applications — General Matters Applicable to All.—1. *Contents of Application.* All formal applications must be by petition in writing, signed by the applicant and duly verified. The petition must set forth the full name and postoffice address of the applicant and must show the full name and address of its attorney, if any, and must contain the facts on which the application is based, with a request for the order, authorization, permission or certificate desired and a reference to the particular provision of law requiring or providing for the same. Three copies of the petition shall be filed with the original, except in applications covered by rules XVII, XVIII, XIX and XX, in which cases the original petition alone need be filed.

The petition must contain such further statements as may be required by any provision of law or of these rules and must show in detail compliance therewith.

If the applicant is a corporation, there must be annexed to the petition a certified or verified copy of its articles of incorporation or charter and all amendments thereof, except in applications covered by rules XVII, XVIII, XIX and XX. If maps or profiles are filed with the petition, they must always be filed in triplicate and one copy thereof shall be on tracing linen.

2. *Documents Filed With Application.* Whenever under these rules any map, profile, certificate, statement or other document is required to be filed with a petition and the same has theretofore been filed with the Commission, the petition may state the fact of such filing, with the date and the proceedings, in which, or occasion on which, the filing was made.

3. *Procedure of Commission on Filing of Petition.* Upon the filing of such petition, the Commission shall examine the same to see whether it establishes a *prima facie* case for action on the part of the Commission and conforms to these rules. If the petition fails in either of these respects, the Commission will give notice of the defects to the applicant, who may correct the same. If the petition be found to state a *prima facie* case and to comply with the rules, the Commission may make an order *ex parte* granting the application or will appoint a time and place for a hearing on the same, provided that a hearing shall always be held when provided for in the Public Utilities Act.

Rule X. Railroad Crossings—Applications for Construction, Alteration or Abolition of.—When application is made for the construction, alteration or abolition of crossings (1) of public roads, highways or streets by railroads, or (2) of railroads by public roads, highways or streets, or (3) of railroads by railroads, or (4) of railroads by street railroads, or (5) of street railroads by railroads, or (6) of public roads or highways by street railroads, or (7) of street railroads by public roads or highways, under the provisions of section 43 of the Public Utilities Act,

1. The petition, in addition to the requirements of Rule IX, must state:

(a) If the application is for a crossing at grade, such facts, data and estimates of cost as tend to show that

it is not reasonable or practicable to effect a separation of grades.

(b) Such safety device or other protection, if any, as the applicant may believe should be installed, with detailed information concerning the same.

2. With the petition shall be filed:

(a) Map on scale of not less than 200 feet per inch showing accurately the location of all tracks, buildings, structures, property lines, streets and roads in the vicinity of the proposed crossing.

(b) Profiles showing ground lines and proposed grade lines of approaches on such public roads, highways or streets, railroads or street railroads as may be affected by the proposed crossing. In case of a contemplated crossing of a railroad by a railroad, the profile of each railroad shall show the customary information for not less than one (1) mile on each side of the proposed crossing.

Rule XI. Safety Devices at Railroad Crossings—Applications for.—Whenever a railroad or street railroad desires to protect any crossing which it may have at grade with another railroad or street railroad, with an interlocking or other safety device, it may make application to the Commission for an order approving such device and directing its construction and also prescribing the division of the cost of construction, maintenance and operation of the same.

1. The petition, in addition to the requirements of Rule IX, must state:

(a) The kind of device proposed, with a description thereof and an estimate of the cost of its construction and operation.

(b) The average number of trains of each class, and of cars in case of street railroads, operated daily over the crossing by each railroad over a period of not less than thirty (30) days.

2. With the petition shall be filed:

(a) Map on scale of not less than 100 feet per inch, showing the location of main tracks, the length and location of all switches, sidings and spur tracks, all buildings and obstructions to the view in the vicinity, the proposed location of tower, if any, and the proposed location of all derails, switches, signals and detector bars, which are proposed to be operated by the device.

(b) A profile of each railroad or street railroad, showing the customary information for not less than one (1) mile on each side of the crossing, in case of railroads, and not less than 1,000 feet in case of street railroads.

(c) Copies of such contracts or agreements, if any, as may have been entered into relating to the construction or protection of the crossing.

Rule XII. New Construction or Extensions—Application for.—When application is made by a street railroad corporation, gas corporation, electrical corporation, telephone corporation or water corporation for a certificate that the present or future public convenience or necessity requires or will require a proposed new construction or an extension in the cases specified in section 50*a* of the Public Utilities Act:

1. The petition, in addition to the requirements of Rule IX, must state:

(a) The proposed location, route or routes, the method of construction, and the names of all public utility corporations or persons with whom the proposed new construction or extension is likely to compete.

(b) The facts showing that the proposed new construction or extension is or will be required by public convenience and necessity.

(c) The manner, in detail, in which it is proposed to finance the proposed new construction or extension.

2. With the petition shall be filed:

(a) Map to suitable scale, showing the location or route of the proposed new construction or extension with its relation to other public utilities with which the same is likely to compete, which map shall contain all data necessary for a complete understanding of the situation.

(b) When the consent, franchise or permit of a county, city and county, municipal or other public authority is necessary, a certified copy of the application therefor and of the ordinance or other document granting such consent, franchise or permit. If it is impossible to file a copy of the application, the facts rendering such filing impossible shall be stated.

Rule XIII. Franchises and Permits—Applications for Permission to Exercise.—When application is made by a street railroad corporation, gas corporation, electrical corporation, telephone corporation or water corporation for a certificate that public convenience and necessity require the exercise of a right or privilege under a franchise or permit, in the cases specified in section 50*b* of the Public Utilities Act:

1. The petition, in addition to the requirements of Rule IX, must state:

(a) The financial condition of the applicant as defined in Rule I, 6.

(b) The facts showing the proceedings theretofore taken with reference to franchise or permit for which permission and approval are sought.

(c) If the application is for permission to exercise a right or privilege under any franchise or permit granted prior to March 23, 1912, but not theretofore exercised, or the exercise of which has been suspended for more than one year, the reason why such right or privilege has not been exercised or has been suspended.

(d) The facts showing that the exercise of such right or privilege under such franchise or permit is required by the public convenience and necessity.

2. With the petition shall be filed:

(a) A certified copy of the written application to the proper county, city and county, municipal or other public authority for its consent, franchise or permit and of the ordinance or other document, if any has been secured, granting such consent, franchise or permit. If it is impossible to file a copy of the application, the facts rendering such filing impossible shall be stated.

(b) Map to suitable scale, showing the streets, avenues and all other places and property in or upon or along which it is proposed to exercise such franchise or permit.

3. If a public utility desires to exercise a right or privilege under a franchise or permit which it contemplates securing, but which has not as yet been granted to it, such public utility may apply to the Commission for an order preliminary to the issue of the certificate. The Commission will, in its discretion, thereupon make an order declaring that it will thereafter upon application issue the desired certificate, upon such terms and conditions as it may designate, after the public utility has obtained the contemplated franchise or permit. Upon the presentation to the Commission of evidence satisfactory to it that such franchise or permit has been secured by such public utility, the Commission will thereupon issue such certificate.

Rule XIV. Sale, Lease, Assignment, Mortgage or Other Disposition of Property — Application for.— When application is made by a railroad corporation, street railroad corporation, pipe-line corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation or water corporation for an order authorizing the sale, lease, assignment, mortgage

or other disposition of the whole or any part of its railroad, street railroad, line, plant or system, necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, or by any means whatsoever, direct or indirect, the merger or consolidation of its property, franchises or permits or any part thereof, with any other public utility, in the cases specified in section 51*a* of the Public Utilities Act,

1. The petition must be made by all the parties to the proposed transaction and, in addition to the requirements of Rule IX, must state:

(a) The financial condition of each applicant, as defined in Rule I, 6.

(b) In detail the reasons upon the part of each applicant for entering into the proposed sale, lease, assignment, mortgage or other disposition of such property, franchise or permit and all the facts warranting the same and showing that it is for the benefit of the public service.

2. With the petition shall be filed:

(a) A copy of the proposed contract, agreement, lease or mortgage, and if prior agreements have been made between the parties relating to the same subject matter, copies of such agreements must be filed with the petition or referred to as already on file with the Commission.

Rule XV. Acquisition of Part or All of Capital Stock of Another Utility—Applications for.—When application is made by any public utility for authorization to purchase or acquire, take or hold any part of the capital stock of any other public utility, under the provisions of section 51*b* of the Public Utilities Act,

1. The petition must be made by the public utility proposing to purchase, acquire, take or hold the stock,

and in addition to the requirements of Rule IX, must state:

(a) The financial condition of the applicant and of the corporation whose stock is sought to be purchased, acquired, taken or held, as defined in Rule I, 6.

(b) The reasons why the applicant desires to secure the stock, and the amount of the stock of the public utility affected already owned or held by applicant, if any.

(c) Price proposed to be paid for the stock, the terms of payment with the market value thereof, the highest and lowest price during the period of at least one year prior to the application, and dividends, if any, paid for a period of five years.

Rule XVI. Stocks, Bonds, Notes and Other Evidences of Indebtedness—Applications for Order Authorizing Issue of.—When application is made by any public utility for an order authorizing the issue of stock or stock certificates, or bonds, notes or other evidences of indebtedness payable at periods of not more than twelve months after the date thereof, under the provisions of section 52 of the Public Utilities Act.

1. The petition, in addition to the requirements of Rule IX, shall state:

(a) The financial condition of the applicant as defined in Rule I, 6, and a description of the railroad, street railroad, line, plant or system, and equipment of the applicant, with its original cost, where possible, and its cost to the applicant, and the amount of its stock held by other corporations and their names, and the kind of stock held by each. If it is impossible to state the original cost, the facts creating such impossibility shall be stated.

(b) The amount and kind of stock, if any, which the public utility desires to issue, and, if preferred, the nature and extent of the preference: the amount of

bonds, notes or other evidences of indebtedness, if any, which the public utility desires to issue, with terms, rate of interest, and whether and how to be secured.

(c) The use to which the capital to be secured by the issue of such stock or stock certificates, or bonds, notes or other evidences of indebtedness is to be put, with a definite statement of how much is to be used severally for the acquisition of property, the construction, completion, extension or improvement of facilities, the improvement of service, the maintenance of service, the discharge or refunding of obligations, and the reimbursement of moneys actually expended from income or from any other moneys in the treasury, as provided by section 52 of the Public Utilities Act.

(d) The property in detail which is to be acquired, with its value, a detailed description of the contemplated construction, completion, extension or improvement of facilities set forth in such a manner that an estimate of cost may be made, a statement of the character of the improvement of service proposed, and of the reasons why the service should be maintained from its capital. If it is proposed to discharge or refund obligations or to reimburse moneys actually expended, a statement of the nature and description of such obligations and expenditures, including the par value of the obligations and the amount for which they were actually sold and the application of the proceeds and of the moneys expended, showing when, to whom and for what paid or applied.

(e) Whether any contracts have been made for the acquisition of such property, or for such construction, completion, extension or improvement of facilities, or for the reimbursement of expenditures, or for the disposition of any of the stock or stock certificates, or bonds, notes or other evidences of indebtedness which it is proposed to issue or the proceeds thereof, and if

any contracts have been made, copies thereof shall be annexed to the petition.

(f) Whether any of the outstanding stock or stock certificates or bonds, notes or other evidences of indebtedness of the public utility have been issued or used in capitalizing the right to be a corporation, or any franchise or permit, or the right to own, operate or enjoy any such franchise or permit, or any contract for consolidation or lease, and, if so, the amount thereof and the franchise, right, contract or lease so capitalized.

(g) If the stock or stock certificates are to be issued by a corporation formed by the merger or consolidation of two or more corporations, the petition shall contain a complete statement of the financial condition of the corporations so to be merged or consolidated of the kind required by subdivision (*a*) hereinbefore set forth, and of their capital stock at the par value thereof.

(h) Such other facts as may be pertinent to the application.

2. With the petition must be filed:

(a) A certificate or proposed certificate of proceedings at the meeting of directors and stockholders authorizing the issue of the desired securities with a copy of the mortgage, if any.

(b) A certified list of the certificates of stock already outstanding, with the shares of stock represented by each certificate, and the amounts paid to the public utility on each certificate as originally issued, either in money, labor or property, stating the amount of each.

(c) Maps, profiles, plans and plats of proposed property and construction showing—

1. In the case of railroads, including street railroads, all information required by the Commission's General Order No. 14.

2. In the case of other public utilities, such certified maps and plans as will indicate to the Commission the property to be acquired and the location, extent and character of the proposed construction.

(d) Original deeds of property or certified copies thereof covered by proposed issue, with a detailed statement of its actual cost.

(e) Certified copies of all contracts for the acquisition of proposed property and equipment and for construction, with plans and specifications of such buildings and structures as may have been designed.

(f) Complete inventory of all property and equipment proposed to be acquired, prepared upon or in accordance with blank forms and specifications prescribed by the Commission, and a statement of the cost thereof.

(g) A certified statement of all cash bonuses and other donations of property received, if any.

3. If the application is granted, in whole or in part, the Commission's order will:

(a) Prescribe the purposes and amounts for which the issue authorized or the proceeds thereof may be used.

(b) Direct the applicant to report under oath the sale or sales of the securities or obligations authorized, the terms and conditions of sale and the amounts realized therefrom.

(c) Require the applicant to make a verified report at least every six months showing in detail the use and application by it of the moneys so realized until such moneys shall have been fully expended.

(d) Specify such condition or conditions and prescribe such terms as the Commission may deem reasonable and necessary to the exercise of its permission.

Rule XVII. Increases in Charges—Applications for Permission to Make.—When application is made by

any public utility to raise any rate, fare, toll, rental or charge or so to alter any classification, contract, practice, rule or regulation as to result in an increase in any rate, fare, toll, rental or charge, under the provisions of section 20 of article XII of the Constitution of this state or section 63*a* of the Public Utilities Act,

1. The petition, in addition to the requirements of Rule IX, must state:

(a) The rates, fares, tolls, rentals or charges in effect and the increases which it is desired to make. These allegations may be made by reference to schedules accompanying the petition.

(b) The reasons for the increase, to be stated in full, so that the Commission may clearly see the justification therefor.

2. With the petition must be filed:

(a) Such schedules or data, if any, as the Commission's tariff circulars or other applicable orders may, from time to time, specify.

3. If the Commission is satisfied with the showing so made, it may take action on the application *ex parte;* otherwise it may order a hearing and give notice thereof to such corporations or persons as it may consider necessary or desirable.

Rule XVIII. Long and Short Haul: Thirty Day Notice Rule—Applications for Relief from.—When application is made by a common carrier for authorization to charge less for a longer than a shorter haul over the same line or route in the same direction, under the provisions of section 21 of article XII of the Constitution of this state or of section 24*a* of the Public Utilities Act, or by a telegraph or telephone corporation for authorization to charge less for a longer than for a shorter distance service for the transmission of messages or conversation over the

same line or route in the same direction, under the provisions of section 24*b* of the Public Utilities Act, or by any public utility to change a rate, fare, toll, rental, charge or classification, or a rule, regulation or contract relating to or affecting any rate, fare, toll, rental, charge, classification or service, in cases other than those covered by Rule XVII, on less than thirty days' notice, under the provisions of section 15*b* of the Public Utilities Act,

1. The petition, in addition to the requirements of Rule IX, must state—

(a) Such facts in connection with the matter and the reasons for the desired relief as may be specified from time to time in the Commission's tariff circulars or other applicable orders or instructions.

2. With the petition must be filed:

(a) Such schedules or data, if any, as the Commission's tariff circulars or other applicable orders or instructions may, from time to time, specify.

3. If the Commission is satisfied with the showing so made, it may take action on the application *ex parte;* otherwise it may order a hearing and give notice thereof to such corporations or persons as it may consider necessary or desirable.

Rule XIX. Excessive or Discriminatory Charges—Applications for Permission to Refund.—When application is made by any public utility to make reparation to any shipper or consumer on account of the rates charged to said shipper or consumer being excessive or discriminatory, under the provisions of section 21 of article XII of the Constitution of this state,

1. The petition, in addition to the requirements of Rule IX, must state:

(a) Such facts in connection with the matter as may be specified from time to time in the Commission's

tariff circulars or other applicable orders or instructions.

2. With the petition shall be filed:

(a) Such admissions, undertakings or statements on the part of the applicant as the Commission's tariff circulars or other applicable orders or instructions may, from time to time, specify.

3. If the Commission is satisfied with the showing so made, it may take action on the application *ex parte;* otherwise it may order a hearing and give notice thereof to such corporations or persons as it may consider necessary or desirable.

Rule XX. Extensions of Time to File Required Reports, Statements or Data, or to Comply With Commission's Orders—Application for.—Whenever a public utility has been required by the Commission to file any report, statement or data or to comply with any other order of the Commission within a time specified, and for any reason is unable to do so within the time specified, it must, before the expiration of such time, file with the Commission an application for extension of time, in which event—

1. The petition shall set forth in detail:

(a) What, if any, effort has been made by the applicant to prepare such report, statement or data or to comply with such order.

(b) Any facts tending to show why the said report, statement or data cannot be filed or said order complied with within the time prescribed.

(c) Any other facts which may make an extension of time necessary or proper.

(d) The further period of time deemed necessary by the applicant within which to make and file such report, statement or data or to comply with such order.

2. The Commission may direct a hearing upon said petition and in that event the applicant shall attend

before the Commission or the commissioner holding the hearing and produce such witnesses and documents as the Commission may require.

Rule XXI. Other Applications. — All applications relating to matters over which the Commission has jurisdiction, and which are not governed by any of the preceding Rules, shall be made by petition, setting forth the name and address of the applicant and the matter with reference to which the Commission's order, authorization or permission is desired. Thereupon the procedure shall be such as the Commission may prescribe.

Rule XXII. Deviations from Rules—Authorizations for.—In special cases, for good cause shown, the Commission may permit deviations from these rules in so far as it may find compliance therewith to be impossible or impracticable.

Rule XXIII. Amendment of Rules.—The rules may be amended at any regular session of the Commission.

Rule XXIV. Forms Prescribed for Use.—The following forms may be used in cases to which they are applicable, with such modifications as the circumstances may render necessary:

FORMS PRESCRIBED.

1. Formal Complaint.
2. Formal Application.
3. Order to Satisfy or Answer a Complaint.
4. Answer.
5. Notice of Hearing on Complaint.
6. Published Notice of Hearing on Application.

No. 1.

Form of Formal Complaint.

Before the Railroad Commission of the State of California.

[Insert name of complainant],
Complainant,
vs.
[Insert name of defendant],
Defendant.

No. ——.
[To be inserted by the secretary of the Commission.]

COMPLAINT.

The complaint of [here insert full name of complainant] respectfully shows:

(1) That [here state occupation and postoffice address of complainant].

(2) That [here insert full name, occupation and postoffice address of defendant].

(3) That [here insert fully, clearly and with reasonable certainty the act or thing done or omitted to be done which complainant claims constitutes a cause of complaint, with reference, where practicable, to the law, order or rule, and the section or sections thereof, of which a violation is claimed].

Wherefore, complainant asks [here state specifically the relief to which complainant believes he is entitled].

Dated at ———, California, this —— day of ———, 191——.

———————,
[Complainant's name.]

———————.
[Name and address of attorney, if any.]

State of California,
——— County of ———, ss.

[Insert name of complainant or other person qualified to verify], being first duly sworn, deposes and says: That he is the complainant in the action entitled as above; that he has read the foregoing complaint and knows the contents thereof; and that the same is true of his own knowledge, except as to matters which are therein stated on information or belief, and that as to those matters he believes it to be true.

———————.

Subscribed and sworn to before me this —— day of ————, 191——.

———————,
Notary Public in and for the County ——— of ———, State of California.

No. 2.

Form of Formal Application.

Before the Railroad Commission of the State of California.

In the Matter of the Application of [here insert name of applicant], for [here insert desired order, authorization, permission or certificate, thus: "order authorizing issue of stocks and bonds"].	No. ——. [To be inserted by the secretary of the Commission.]

APPLICATION.

The petition of [here insert name of applicant] respectfully shows:

1. That [here insert principal place of business or postoffice address, character of business and territorial extent thereof, of applicant].

2. That [here insert fully, clearly and with reasonable certainty, the facts required by these Rules and any additional facts which the applicant desires to state to show the relief which he desires and the facts on which it is based].

Wherefore, petitioner asks that the Railroad Commission of the State of California [here state specifically the action which the applicant desires the Railroad Commission to take].

Dated at ———, California, this —— day of ———, 191——.

———.
[Petitioner's name.]

[Verification]

———.
[Name and address of attorney, if any.]

No. 3.

Form of Order to Satisfy or Answer a Complaint.

Before the Railroad Commission of the State of California.

[Insert name of complainant],
Complainant,
vs.
[Insert name of defendant],
Defendant.

No. ——.
[To be inserted by the secretary of the Commission.]

ORDER TO SATISFY OR ANSWER.

To [here insert name and address of defendant].

You are hereby notified that a complaint has been filed in the action entitled as above against you as defendant, and you are hereby ordered to satisfy the matters therein complained of or to answer said complaint in writing within ten (10) days from the service upon you of this order and the copy of said complaint which is hereunto attached.

By order of the Railroad Commission.

Dated at San Francisco, California, this —— day of ————, 191——.

————————,
Secretary Railroad Commission
of the State of California.

[Railroad Commission Seal.]

No. 4.

Form of Answer to Formal Complaint.

Before the Railroad Commission of the State of California.

[Insert name of complainant],
Complainant,
vs.
[Insert name of defendant],
Defendant.

No. ——.
[To be inserted by the secretary of the Commission.]

ANSWER.

The above-named defendant, for answer to the complaint in this proceeding, respectfully states:

1. That [here follow specific denials of such material allegations of the complaint as are controverted by the defendant and also a statement of any new matter constituting a defense. Continue numbering each succeeding paragraph].

Wherefore, the defendant prays that the complaint be dismissed [or other appropriate prayer].

———————.

[Name of defendant.]

[Verification.]

No. 5.

Form of Notice of Hearing on Complaint.

Before the Railroad Commission of the State of California.

[Insert name of complainant],
Complainant,
vs.
[Insert name of defendant],
Defendant.

No. ——.
[To be inserted by the secretary of the Commission.]

NOTICE OF HEARING.

To [here insert names of all parties].

You and each of you are hereby notified that the Railroad Commission of the State of California has set the above-entitled case for hearing before Commissioner ——— on [day of week] the [day of month] day of [name of month], 191——, at —— o'clock — M., in the office of the Commission, Room ——, Commercial Building, San Francisco, California, at which time and place you will be given an opportunity to be heard.

By order of the Railroad Commission.

Dated at San Francisco, California, this —— day of ————, 191——.

————————,
Secretary Railroad Commission
of the State of California.

[Railroad Commission Seal.]

No. 6.

Form of Published Notice of Hearing on Application.

Before the Railroad Commission of the State of California.

In the Matter of the Application of [here insert name of applicant] for [here insert desired order, authorization, permission or certificate].

No. ——.
[To be inserted by the secretary of the Commission.]

NOTICE OF HEARING.

Notice is hereby given that the application of [name of applicant in full] for the [approval, determination, consent, permission, certificate or authorization] of the Railroad Commission of the State of California to [here state nature of consent asked] will be heard before Commissioner ——— at the office of the Commission in the Commercial Building, San Francisco, California, on [day of week], the [day of month] day of [name of month], 191——, at —— o'clock — M.

By order of the Railroad Commission.

Dated at San Francisco, California, this —— day of ———, 191——.

———,
Secretary Railroad Commission
of the State of California.

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